

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43442; File No. SR-NYSE-00-40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Section 804 of the Exchange's Listed Company Manual

October 13, 2000.

Pursuant to section 19(b)(1) of the Securities Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 29, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange's amended delisting appeal procedures provide for notice regarding the status of an affected company. In lieu of the ticker symbol suffix originally proposed,³ the Exchange proposes to utilize a combination of ticker and information notices and web site information to supplement the press release notice provided for in Section 804 of the NYSE Listed Company Manual.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange and at the Commission.

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In a filing made last year and recently approved by the Commission, the Exchange amended its procedures for delisting a security and the accompanying Exchange appeals process available to the issuer.⁴ In addition to providing that securities may continue trading pending an appeal, the Exchange proposed to append a suffix (.DL) to the ticker symbol of the security involved. The indicator was one of the ways the Exchange intended to inform the investing public and investment decision-makers that this particular company was no longer in compliance with NYSE continued listing standards and that the delisting of the security was pending and, when applicable, subject to appeal to the Exchange's board.

The Exchange has now determined that, absent significant systems changes that would require considerable time and expense, appending a suffix would in fact change a company's ticker symbol. Therefore, an investor or broker would have to know to enter the symbol with a .DL into a quotation device to obtain a quote or see the last sale. Entering the normal one, two or three letter symbol would elicit the message "security not found." This would not meet the Exchange's goal of informing interested parties of the status of the security. In addition, clearance and settlement systems do not recognize a non-alpha character in a ticker symbol, so there would be confusion between a security with a .DL suffix and another security with a different, longer ticker symbol that uses .DL as its last two characters.

Even if the systems work were done to allow use of the suffix without a complete symbol change, the Exchange is concerned that it could not be confident that the suffix would be carried by every vendor. This would obviate the purpose behind the use of the suffix.

As a result, the Exchange has not yet implemented the amended procedures. In order to do so, in lieu of the .DL suffix, the Exchange proposes to employ the following mechanisms to achieve the information dissemination contemplated by the rule:

a. The Exchange proposes to circulate a ticker notice each day prior to the opening, specifying the delisting status of each company in question.

b. The Exchange proposes to have the same information notice distributed daily via the Exchange's online information notices system to vendors, member firms and other interested parties notifying them of the status of the listed company.

c. The Exchange proposes to have a company's delisting status noted with the company information on the Exchange's web site.

The Exchange believes that these steps will better disseminate information to all market participants, both professional and nonprofessional, on the subject companies than would the .DL suffix. The Exchange also believes that it is important to note that the entire notification process begins with a press release regarding the delisting determination made by the Exchange staff. The public is then updated with further press releases when a company decides to appeal, and when that appeal is decided. As a result, that record will be available to anyone who checks for news on the company.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act⁵ in general and furthers the objectives of section 6(b)(5) of the Act⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 42863 (May 30, 2000), 65 FR 36488 (June 8, 2000) (proposing to append an identifier suffix to the ticker symbols of securities that are pending delisting status or that have been determined by Exchange staff to warrant suspension and delisting).

⁴ *Id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act⁷ and Rule 19b-4(f)(1) thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.⁸ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-00-40 and should be submitted by November 13, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43436; File No. SR-PHLX-00-83]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Distribute Quality of Execution Reports to Specialists and Order Flow Providers

October 11, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 5, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to provide reports regarding the quality of execution of option orders in connection with its new payment for order flow fee.³ The text of the proposed rule change is available at the principal offices of the Phlx.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of the statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In view of recent developments in options trading, including the Phlx's new payment for order flow fee, the

Phlx has determined to provide Phlx specialists and order flow providers with sufficient information for them to determine whether order flow providers are receiving the best execution of their customers' orders at the Phlx.⁴ Specifically, the Exchange intends to distribute detailed daily and summary monthly Quality of Execution Reports to order flow providers and specialist units with respect to all orders delivered through the Phlx's Automated Options Market ("AUTOM") System.⁵ The Phlx represents that Quality of Execution Reports will reflect all orders that are entered electronically through AUTOM and are executed either by AUTO-X⁶ or by a specialist with the assistance of X.Station.⁷ Quality of Execution Reports are designed to provide statistical data so that firms may analyze whether the orders they directed to the Phlx received the best execution. The Exchange initially intends for the Quality of Execution Reports to list the national best bid or offer ("NBBO") that prevailed at the time AUTOM received each order and to identify the execution price, the execution volume, and the speed of execution for each order.⁸ Initially, the report will also identify trades that may have been executed outside of the NBBO and will show what action, if any, was taken to adjust the price. For trades that were not executed at the NBBO, the information will be reported on an intraday basis to the Exchange's Surveillance Department staff, who will assist members involved in the trade in deciding whether a price

⁴ The Phlx has imposed a payment for order flow fee on certain designated transactions of Phlx specialists and registered options traders. The funds are made available to Phlx specialists, who may use the funds to pay order flow providers for their options order flow. In publishing the Phlx's proposed rule change, the Commission stated its concerns that brokers who are paid to send their customers' orders to one exchange have a conflict of interest that may reduce their commitment to the duty they owe the customers to obtain the best execution available. See Securities Exchange Act Release No. 43177 (Aug. 18, 2000), 65 FR 51889 (Aug. 25, 2000).

⁵ AUTOM is the Phlx's electronic order routing, delivery, execution, and reporting system for equity and index options. See Phlx Rule 1080.

⁶ AUTO-X, the automatic execution feature of AUTOM, automatically executes public customer market and marketable limit orders for certain strike prices and expiration months in equity and index options. See Phlx Rule 1080.

⁷ The X.Station is an electronic order book on the Phlx options floor. See Securities Exchange Act Release No. 42006 (Oct. 13, 1999), 64 FR 57180 (Oct. 22, 1999).

⁸ The Phlx expects that this report may be revised to accommodate any suggested revisions of specialist units, order flow providers, Phlx staff, or others in order to enhance the report's effectiveness.

⁷ 15 U.S.C. 78s(b)(3)(A)(i).

⁸ 17 CFR 240.19b-4(f)(1).

⁹ 17 CFR 200.30-2(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 43177 (Aug. 18, 2000), 65 FR 51889 (Aug. 25, 2000).