consistent with Section 6(b)(5) of the Act[9] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The proposed rule change would allow a specialist to make a bid or offer that betters the market at a price that would elect stop orders and eliminate the requirement to obtain prior Floor Official approval, unless the price of the specialist's electing transaction is more than 2/16 point away from the previous sale. The Commission believes that eliminating the requirement of Floor Official approval for such transactions could help to alleviate the administrative burden for Floor Officials and permit the reallocation of useful resources and increase the operational efficiency of Floor Officials and specialist's, while maintaining the requirement of Floor Official approval for the specialist stop order elections that are most likely to warrant Floor Official scrutiny (*i.e.,* where the electing transaction is more than 2/16 point away from the previous sale). An NYSE review of specialist' stop order electing transactions showed that a significant percentage of trades occur at a relatively small or no change in price. For example, an Exchange analysis of the difference between the electing stop price by specialists and the last sale price for September through November 1998 shows that 60% of such electing sales took place 2/16 point or less from the last sale price. Based on these statistics the proposal would eliminate approximately 60% of required Floor Official approvals in this area. Therefore, the Commission believes that the proposed rule change should significantly reduce the administrative burden on Floor Officials. Moreover, the proposal should assist specialists in facilitating fair and orderly markets by not requiring prior Floor Official approval before a specialist can make a bid or offer that would elect stop orders. At the same time, however, the Commission is mindful that the elimination of Floor Official approval in this limited circumstance makes it incumbent upon the NYSE to rigorously surveil for possible violations of NYSE specialists' agency obligations that may be facilitated by the relaxation of the Floor Official requirement. Therefore, the Commission requests that the NYSE provide to Commission staff, no later than nine months from the date of this order, a report discussing the impact this proposal has had on the number of stop orders being elected and any possible violation of Commission of NYSE rules resulting from such transactions. Moreover, the Commission expects that the NYSE will promptly file a proposed rule change with the Commission that conforms this rule to decimals.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register.** Specifically, Amendment No. 1 changes the proposal to eliminate Floor Official approval for transactions that elect stop orders by specialists for transactions that are more than 2/16 point from the last sale, as opposed to more than 4/16 point away from the last sale. Because amendment No. 1 increases the number of specialist stop order election transactions that require Floor Official approval, it should improve the NYSE's ability to surveil for abuses of Commission or NYSE rules that might result from these transactions. Thus, the Commission believes that the combination of Amendment No. 1 to the proposal and the Exchange's surveillance procedures should make stop order election by specialist less susceptible to manipulation and provide adequate protection for investors. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[10] to approve Amendment No. 1 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 25049–0609. 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 at 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–99–10 and should be submitted by March 9, 2000.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[11] the proposed rule change, as amended, (SR–NYSE–99–10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5) and 78s(b).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42389; File Nos. SR–PCX–00–01; SR–Amex–00–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the Pacific Exchange, Inc. and the American Stock Exchange LLC Relating to Exercise Price Intervals and Exercise Prices for FLEX Equity Options

February 7, 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 January 11, and January 27, 2000, the Pacific Exchange, Inc. (''PCX'') and the American Stock Exchange LLC (''Amex'') (collectively the ''Exchanges''), respectively, filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I and II below, which Items have been prepared by the Exchanges. The Commission is publishing this notice and order to solicit comments on the proposed rule changes from interested persons and to approve the proposals on an accelerated basis.

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

The Amex proposes to remove paragraph (c)(3) from Exchange Rule 903G. Paragraph (c)(3) limits exercise

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

price intervals and exercise prices for FLEX Equity call options to those that apply to Non-FLEX Equity call options. In addition, PCX proposes to delete Commentary .01 to PCX Rule 8.102, which is similar to the paragraph Amex proposes to remove.[3]

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item III below. The Exchanges have prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

The Exchanges propose to eliminate their rules that limit the exercise price intervals and exercise prices available for FLEX Equity call options to those intervals and prices that are available for Non-FLEX Equity call options. This policy was intended to eliminate uncertainty concerning what constitutes a ''qualified'' covered call for certain purposes under the Internal Revenue Code pending clarification of this tax issue.

Currently, under Section 1092(c)(4)(B) of the Internal Revenue Code, certain covered short positions in call options qualify for advantageous tax treatment if the options are not in the money by more than a specified amount at the time they are written. One measure used to determine whether a call option is qualified is whether its exercise or ''strike'' price is not lower than the ''lowest qualified benchmark price,'' which is generally the highest strike price available for trading that is less than the current price of the underlying stock. Since the exercise prices of FLEX Equity Options are not subject to the same intervals that apply to Non-FLEX Equity Options, this has raised the question whether the existence of a series of FLEX Equity Options with a strike price of, for example, 58 when the price of the underlying stock is 59 would disqualify a Non-FLEX call option with a strike price of 55, which would otherwise be the highest strike price available that is less than the price of the stock.

The Internal Revenue Service (''IRS'') reviewed this issue and proposed regulations that would not require that strike prices established by equity options with flexible terms be taken into account in determining whether standard term equity options are too deep in the money to receive qualified covered call treatment.[4] These regulations became effective on January 25, 2000.[5] The effect of the IRS regulations and the Exchanges' proposed withdrawal of the limitations on the exercise price of Equity FLEX call options is that certain taxpayers, particularly institutional and other large investors, can engage in transactions in Equity FLEX call options with a wider range of exercise prices (as was originally intended) without affecting the applicability of Section 1092 of the Internal Revenue Code for qualified covered call options involving equity options with standard terms.

The Exchanges believe that the proposed rule changes, by eliminating a restriction on Equity FLEX call options which has restricted their usefulness as a risk managing mechanism, will remove impediments to and perfect the mechanisms of a free and open market in FLEX Equity Options, and thus are consistent with the objectives of Section 6(b)(5)[6] of the Act.

2. Statutory Basis

The Exchanges believe that the proposed rule changes are consistent with and further the objectives of Section 6(b)(5)[7] of the Act in that the changes are designed to remove impediments to a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organizations' Statements on Burden on Competition

The Exchanges do not believe that the proposed rule changes will impose any burden on competition.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rules are 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, DC20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings will also be available for inspection and copying at the principal offices of the PCX and Amex. All submissions should refer to File Nos. SR–PCX–00–01 and SR–Amex–00–02 and should be submitted by March 9, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Changes

After careful review, the Commission finds that the proposals are consistent with the requirements of the Act.[8] In particular, the Commission finds that the proposals are consistent with Section 6(b)(5)[9] of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to remove impediments to a free and open market and to protect investors and the public interest.

The Commission believes that the proposals allow sophisticated, high net-worth investors to take full advantage of FLEX options. In part, FLEX options were created to allow these investors to manage their risks by having the ability to negotiate strike prices, contract terms for exercise style (*i.e.*, American, European, or capped), and expiration dates. However, because of the potential adverse tax effect on qualified covered calls, the Exchanges limited FLEX call strike prices and exercise intervals to those available for standardized equity calls. Now that the tax issue has been clarified, this limitation is being removed. With the removal of this

[3] The Commission approved these rule changes in a single approval order in 1996. *See* Release No. 34–37726 (September 25, 1996), 61 FR 51474 (October 2, 1996).

[4] Department of the Treasury, IRS REG–104641–97, 63 FR 34616 (June 25, 1998).

[5] Department of the Treasury, IRS REG–104641–97, 65 FR 3812 (January 2000).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

limitation, the Commission believes that sophisticated, high net-worth investors will have a better opportunity to take advantage of the risk-management mechanisms provided by FLEX options.[10]

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission recently approved a virtually identical Chicago Board Options Exchange, Inc., proposal SR–CBOE–99–63,[11] which had been published as SR–CBOE–98–39.[12] The Commission received no comment letters on this filing. Additionally, Amex filed a very similar proposal, SR–Amex–98–43, which it later withdrew because the IRS had not yet acted on its proposed rulemaking.[13] The current proposals mirror the changes that were approved in SR–CBOE–99–63. In addition, the proposals allow FLEX options to be used as they were originally intended to be used. The Commission believes, therefore, that granting accelerated approval to the proposed rule changes is appropriate and consistent with Section 6 of the Act.[14]

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–PCX–00–01 and SR–Amex–00–02) are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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[10] The Commission expects that the Options Disclosure Document (''ODD'') will promptly be amended to reflect the removal of the strike price limitation for FLEX equity call options. *See* October 1996 Supplement to the ODD.

[11] *See* Release No. 34–42371 (January 31, 2000) (order approving SR–CBOE–99–63.)

[12] *See* Release No. 34–40584 (October 21, 1998), 63 FR 58080 (October 29, 1998) (notice of filing of SR–CBOE–98–39.)

[13] *See* Release No. 34–40795 (December 15, 1998), 63 FR 71321 (December 24, 1998) (notice of filing SR–Amex–98–43.)

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42405; File No. SR–Phlx–99–51]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Assessing a Monthly Capital Funding Fee on a Permanent Basis

February 8, 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 November 26, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx proposes to amend its schedule of dues, fees, and charges to charge each of the 505 Exchange set owners[3] a monthly capital funding fee of $1,500 per seat owned.[4] The Commission previously approved implementation of the capital funding fee on a pilot basis until April 5, 2000;[5] the Exchange is now requesting permanent approval of the fee. This proposed rule change replaces SR–Phlx–99–43.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For the purposes of this filing, the term ''owner'' is defined as any person or entity who or which is a holder of equitable title to a membership in the Exchange.

[4] Although the term ''seat owner'' is not defined in Phlx's Bylaws or the Certificate of Incorporation, the term seat owner is the equivalent of a ''membership owner'' as referenced in Phlx's Bylaws and Certificate of Incorporation. However, a seat owner is not per se a member of the Phlx. Telephone conversation between Marla Chidsey, Attorney, Division of Market Regulation, Commission, and Bob Ackerman, Senior Vice President, Chief Regulatory Officer, Phlx (January 5, 2000).

[5] On January 5, 2000, the Commission approved Phlx's proposal to implement the capital funding fee on an accelerated basis until April 5, 2000. Securities Exchange Act Release No. 42318 (January 5, 2000), 65 FR 2216 (January 13, 2000) (SR–Phlx–99–49).

[6] On October 1, 1999, the Exchange filed a proposal to charge this $1,500 capital funding fee. *See* Securities Exchange Act Release No. 42058 (October 22, 1999), 64 FR 58878 (December 15, 1999). However, on November 17, 1999, the Exchange withdrew SR–Phlx–99–43. *See supra* note 5.

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 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

The purpose of the proposed rule change is to amend Phlx's schedule of dues, fees, and charges to charge a monthly capital funding fee of $1,500 per Exchange seat to seat owners.[7]

The $1,500 capital funding fee will be imposed on each of the 505 Exchange seat owners on the last business day of the calendar month. Thus, the owner is responsible for paying the entire subsequent month's fee on the last business day of the prior month.[8] The Exchange intends to segregate the funds generated from the $1,500 fee from Phlx's general funds.

The monthly $1,500 fee is part of the Exchange's long-term financing plan. This monthly fee will provide funding for technological improvements and other capital needs.[9] Specifically, it is intended to fund capital purchases, including hardware for capacity upgrades, development efforts for decimalization, and trading floor expansion. The revenue raised from the fee will be utilized over a three-year period. At that time the Exchange intends to reevaluate its financing plan to determine whether this fee should continue. The revenue generated from the fees will assist the Exchange in

[7] Under Phlx's rules, seat owners who lease out their seats are not deemed members of the Exchange. *See* Phlx Rules of Board of Governors, Rules 3, 5, 17, and 18.

[8] For example, owners of record on September 30 will be billed $1,500 for the month of October.

[9] This fee is distinguished from the Exchange's technology fee in that the technology fee was intended to cover system software modifications, Year 2000 modifications, specific system development (maintenance) costs, SIAC and OPRA communication charges, and ongoing system maintenance charges. The technology fee became effective upon filing in March 1997. *See* Securities Exchange Act Release No. 38394 (March 12, 1997), 62 FR 13204 (March 19, 1997) (SR–Phlx–97–09).