

Commission believes that this data will be important in helping it analyze the impact of this proposed rule change, and in determining whether to extend the operation of this rule or to approve this rule on a permanent basis.

The Commission continues to believe that the provisions governing Conditional Transactions may reflect an appropriate balance between the needs of specialists and other market participants in today's fast moving markets.<sup>23</sup> The Commission notes that specialists continue to be subject to the negative obligation, which requires that their proprietary trading be limited to that reasonably necessary to maintain a fair and orderly market. In approving the expansion of the pilot program beyond active securities, the Commission continues to recognize the potential conflicts of interest presented when a specialist engages in aggressive trading activity such as reaching across the market to trade with the NYSE bid or offer while increasing its position, particularly in the case of less liquid securities. Also, the proposed rule change represents a further shift in the role and obligations of specialists at the Exchange. As such, the Commission is approving the proposed expansion of the scope of the pilot, enabling specialists to execute Conditional Transactions in all securities traded on the NYSE, and the proposed extension of the duration of the pilot until March 31, 2008.

The Commission emphasizes that the extension of the pilot to all securities in no way relieves specialists of their obligations under federal securities laws or NYSE rules. A specialist's ability to effect proprietary transactions remains

is less than the size of the HB/TO execution, the calculation will only include profits realized within the 30-second window. The Exchange will further calculate the quote-based specialist re-entry ratio, and each re-entry price level will be categorized and reported separately. The categories will be in cent intervals at 0, 1, 2, 3, 4, and 5 or more cents. The time window for these calculations will also be in 30 seconds. Finally, the Exchange has agreed to provide the Commission with data related to the average realized spread on specialist HB/TO executions using the formula set forth in Rule 605 of Regulation NMS under the Act. 17 CFR 242.605. Specifically, the average realized spread should be a share-weighted average of realized spreads. For specialist buys, the spread will be double the amount of the difference between the execution price and the midpoint of the consolidated best bid and offer five minutes after the time of HB/TO execution. For specialist sells, the spread will be double the amount of the difference between the midpoint of the consolidated best bid and offer five minutes after the time of HB/TO execution and the execution price. The Exchange has also committed to maintain average measures for each stock-day during a particular month in order to provide such information to the Commission upon request.

<sup>23</sup> See Securities Exchange Act Release No. 54860, *supra* note 6, at 71229.

limited under the Act and the Exchange's rules and specialists must still determine whether their transactions are reasonably necessary. The Commission notes that the Exchange is obligated to surveil its specialists to ensure their compliance with the Act and NYSE rules, and the Exchange has stated that NYSE Regulation believes that it has appropriate surveillance procedures in place to surveil for compliance with the negative obligations.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-NYSE-2007-83), be and hereby is, approved on a temporary basis until March 31, 2008.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56718; File No. SR-NYSE-2007-95]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 18 (Compensation in Relation to Exchange System Failure)

October 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 12, 2007, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The NYSE filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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 is proposing to amend Exchange Rule 18 to reduce the dollar amount required in order for a member organization to seek compensation in the event of an Exchange System failure. The Exchange is further seeking to make technical amendments to the rule text.

#### 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

###### 1. Purpose

Through this filing, the NYSE seeks to amend Exchange Rule 18 to reduce the dollar amount required for a member organization to seek compensation in the event of an Exchange system failure. Pursuant to the proposal, the Exchange seeks to reduce the current requirement that a net loss be in the amount of \$5,000 or higher in order for a member organization to be eligible to make a claim for compensation. Rather, the Exchange seeks to lower the net loss requirement to \$500.

##### Current Exchange Rule 18 (Compensation in Relation to Exchange System Failure)

Today, Exchange Rule 18 sets forth that member organizations that sustain a loss in relation to an Exchange system failure<sup>5</sup> are eligible to submit a claim for compensation to the Exchange, if certain requirements are met. Pursuant to the current rule, in order for a member organization to be eligible to receive payment for a claim, it must incur a net loss equal to or greater than \$5,000. That is, the loss must total

<sup>5</sup> An Exchange system failure is defined as a malfunction of the Exchange's physical equipment, devices and/or programming which results in an incorrect execution of an order or no execution of an order that was received in Exchange systems. See Exchange Rule 18(b).

\$5,000 after any profits received in relation to the same incident are subtracted.<sup>6</sup> Claims must be submitted on a per incident basis. Member organizations are not permitted to aggregate losses incurred as a result of more than one system failure in order to satisfy the \$5,000 minimum claim requirement.

#### *Proposed Amendments to Rule 18—Reduction of Net Loss Dollar Amount*

Exchange Rule 18 was put into effect on July 17, 2007.<sup>7</sup> A newly implemented rule, the initial \$5,000 threshold for net loss seemed to be a reasonable dollar amount at the time. However, as the Exchange has gained experience with the administration of the Rule, it has observed that over 40% of the sustained net loss amounts were less than \$2,000. Nearly 12% of the net loss amounts were less than \$1,000. As a result, only approximately half of the net losses sustained by member organizations were eligible to receive compensation.

In establishing Exchange Rule 18, the NYSE sought to provide a mechanism for member organizations to receive compensation for losses sustained in relation to an Exchange system failure. The Exchange seeks to have the rule be more inclusive of its member organizations that may sustain a loss in the event of an Exchange system failure. In practice the requirement that the net loss equal at least \$5,000 has resulted in the exclusion of approximately half the member organizations that have sustained losses in relation to an Exchange system failure from qualifying to receive compensation. Accordingly, the Exchange seeks to lower the net loss amount to \$500. The Exchange believes that \$500 is a more appropriate threshold. The Exchange believes that this threshold amount will be more inclusive and give more member organizations opportunities to seek compensation for losses sustained in relation to an Exchange system failure.

#### *Technical Amendments to the Rule*

The Exchange further proposes to make technical,<sup>1</sup> non-substantive

<sup>6</sup> In addition to the net loss requirement, Exchange Rule 18 requires that the Exchange's Division of Floor Operations ("Floor Operations") determines that: (i) A valid order was accepted by the Exchange's systems; and that (ii) an Exchange system failure occurred. The member organization is further responsible for providing the Floor Operations with verbal notice of the incident by the market opening on the next business day following the system failure. The member must also provide written notice by the end of the third business day following the system failure. See Exchange Rule 18(a).

<sup>7</sup> The operation of the rule was retroactive to September 2006. See Securities Exchange Act Release No. 55555 (March 27, 2007), 72 FR 16841 (April 5, 2007) (SR-NYSE-2007-09).

amendments to subparagraphs (d), (e), and (f) of Exchange Rule 18. Specifically, subparagraph (d) provides that an "Exchange-designated panel" will be responsible for determining the eligibility of claim for payment. The Exchange seeks to amend the rule to state that the name of the Exchange-designated panel is the "Compensation Review Panel" for the sake of specificity and clarity. As such, references to this panel have been changed to read "Compensation Review Panel" in subparagraphs (d), (e), and (f) of the Rule.

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act<sup>8</sup> that an exchange have rules that are designed to promote just and equitable principles of trade, 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *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.

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

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

NYSE has requested that the Commission waive the 30-day operative delay.<sup>11</sup> The proposal reduces the

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii). Rule 19b-4(f)(6) also requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five

minimum threshold amount for a net loss sustained in relation to an Exchange system failure, thereby providing more opportunities for member organizations to be compensated for losses sustained in relation to an Exchange system failure. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will enable the Exchange to immediately implement the proposal so that more member organizations' net loss claims will qualify for compensation under the rule. For this reason, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.<sup>12</sup>

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 purposes 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. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2007-95 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2007-95. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

<sup>12</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2007-95 and should be submitted on or before November 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56717; File No. SR-Phlx-2007-73]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto to List and Trade Options Already Listed on Another National Securities Exchange

October 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 21, 2007, 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 and II

below, which Items have been substantially prepared by Phlx. On October 18, 2007, Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</sup> This order provides notice of the proposal, as amended, and approves the proposal on an accelerated basis.

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

The Phlx proposes to amend Phlx Rule 1009 to enable it to list and trade equity options that are otherwise ineligible for listing and trading on the Exchange if such options are listed and traded on another national securities exchange and the security or securities underlying such options meet Phlx's continued listing requirements.

The text of the proposed rule change is available on Phlx's Web site (<http://www.phlx.com>), at Phlx's principal office and at the Commission's Public Reference Room.

#### 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 III below. The Phlx 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

The purpose of the proposed rule change is to revise the options listing standards in Phlx Rule 1009 so that as long as the options maintenance listing standards set forth in Phlx Rule 1010 are met and the option is listed and traded on another national securities exchange, Phlx would be able to list and trade the option. Phlx Rule 1009 sets forth the requirements that an underlying equity security must meet before the Exchange may initially list options on that security. Phlx notes that these requirements are uniform among the options exchanges.

Commentary .01(4) to Phlx Rule 1009 relates to the minimum market price at which an underlying security must

trade for an option to be listed on it, and applies to the listing of individual equity options on both "covered" and "uncovered" underlying securities. In the case of an underlying security that is a "covered security" as defined under section 18(b)(1)(A) of the Securities Act of 1933 ("1933 Act"),<sup>4</sup> the closing market price of the underlying security must be at least \$3 per share for five previous consecutive business days prior to the date on which Phlx submits an option class certification to The Options Clearing Corporation ("OCC"). In connection with underlying securities deemed to be "uncovered," Phlx's rules require that the closing price of such underlying security be at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection for such listing. In addition, an alternative listing procedure for "uncovered" securities also permits the listing of such options so long as: (1) The underlying security meets the guidelines for continued approval contained in Phlx Rule 1010; (2) options on such underlying security are traded on at least one other registered national securities exchange; and (3) the average daily trading volume ("ADTV") for such options over the last three calendar months preceding the date of selection has been at least 5,000 contracts. Subparagraphs (1) through (4) of Commentary .01 to Phlx Rule 1009 further set forth minimum requirements for an underlying security such as shares outstanding, number of holders and trading volume.

When Phlx first commenced operations, if an option failed to meet the Exchange's original listing requirements, Phlx could not list that option, even if the option met the continued listing requirements of one or more other exchanges and traded on those exchanges. In order to somewhat remedy this situation, in 2002, the Exchange proposed, and the Commission approved, amendments to Phlx's original listing criteria that permitted Phlx to list options where the underlying "uncovered" security did not meet the \$7.50 share price requirement so long as (i) the underlying security met Phlx's continued listing criteria, (ii) such options were traded on at least one other exchange, and (iii) during the three preceding calendar months, the

<sup>4</sup> Section 18(b)(1)(A) of the 1933 Act provides that "[a] security is a covered security if such security is \* \* \* listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed or authorized for listing on the National Market System of the Nasdaq Stock Market (or any successor to such entities) \* \* \*." See 15 U.S.C. 77r(b)(1)(A).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 supercedes the original filing and replaces it in its entirety.