

<sup>15</sup> pursuant to which shares listed for a continuous period of 15 years or more were eliminated from the calculation of continuing annual fees, should eliminate disparities in annual fees for companies with similar amounts of stock listed on the NYSE. Moreover, the Commission notes the NYSE's belief that only a limited percentage of listed companies—8%—will be affected by the discontinuance of the 15-year policy. Finally, the Commission believes that the phase-in of the proposed fee schedule over a three-year period should mitigate the impact of the proposed fee schedule on issuers.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**, and prior to the expiration of the public comment period, ending December 31, 2002.<sup>16</sup> The Commission believes that good cause exists to justify accelerated effectiveness of the proposed rule change, in part, because the pilot program of Section 902.02 of the NYSE Listed Company Manual, which currently institutes the \$1 million per-issuer fee cap on a pilot basis is due to expire on December 31, 2002. In finding good cause to accelerate effectiveness on this basis, the Commission notes that the NYSE has represented to the Commission that the expiration of the pilot program at any time before the effective date of this proposed rule change could lead to significant operational and billing problems.<sup>17</sup>

Finally, the accelerated approval of the proposed rule change will enable the new fee schedule to be in effect on January 1, 2003, the date which the NYSE wishes to make the new fees applicable. Therefore, the Commission finds that granting accelerated approval to the proposed rule change, as amended, is appropriate and consistent with Section 19(b)(2) of the Act.<sup>18</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the proposed amendment 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-2002-62 and should be submitted by January 31, 2003.

#### V. Order Granting Accelerated Approval

The original rule proposal was published for public comment on December 16, 2002.<sup>19</sup> The NYSE submitted Amendment No. 1 to the proposed rule on December 30, 2002 in order to respond to four letters, which it had received prior to the filing of the proposed rule change, in which four issuers expressed their views opposing the proposed increase in listing fees.<sup>20</sup> For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder. Moreover, the Commission finds that there is good cause to grant accelerated approval to the proposed rule change and Amendment No. 1, thereto.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change and Amendment No. 1 thereto (SR-NYSE-2002-62) are approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47124; File No. SR-Phlx-2002-84]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Off-Floor Trader Fees

January 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 18, 2002, 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 Exchange proposes to amend its schedule of dues, fees and charges to require: (1) Future off-floor traders to pay an initial registration fee of \$100, an increase from \$50; and (2) current and future off-floor traders registered as of April 1 of each year to pay an annual fee of \$350, an increase from \$250. An off-floor trader is a person who is compensated directly or indirectly by a member or participant organization for which the Exchange is the Designated Examination Authority ("DEA") for the solicitation or handling of business in securities, including trading securities for the account of the member or participant organization, and who is not otherwise required to register with the Exchange.<sup>3</sup> The proposed increase in the initial registration fee is to become effective January 2, 2003, with the increased annual fee to be implemented April 1, 2003.<sup>4</sup> The text of the proposed rule change is available at the principal

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

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

<sup>3</sup> Off-floor traders are required to file the Uniform Application for Securities Industry Registration or Transfer form ("form U-4") with the Exchange. See Phlx rule 604(e)(i).

<sup>4</sup> The Exchange has not designated the Off-Floor Trader Registration Fee as eligible for the monthly credit. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR-Phlx-2001-49). The monthly credit allows Exchange members to receive a monthly credit of up to \$1,000 to be applied against certain fees, dues, charges and other such amounts.

<sup>15</sup> The Commission notes that the NYSE proposes to maintain the 15 year policy in Section 902.02C of the NYSE Listed Company Manual for closed-end fund issuers.

<sup>16</sup> The Commission notes that it had received one letter regarding the proposed rule change as of the close of business, December 31, 2002. See note 10, *supra*.

<sup>17</sup> See Item 7, Amendment No. 1.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> See Securities Exchange Act Release No. 46960 (December 6, 2002), 67 FR 77124 (December 16, 2002) (SR-NYSE-2002-62).

<sup>20</sup> In Amendment No. 1, the NYSE also requested accelerated approval and articulated its view as to why the Commission should find good cause to accelerate the effectiveness of the proposed rule change.

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> 17 CFR 200.30-3(a)(12).