

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. (17 CFR 200.30-3(a)(12)).

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38865; File No. SR-NYSE-97-19]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Pilot for Entry of Limit-at-the-Close Orders

July 23, 1997.

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 June 16, 1997, the New York Stock Exchange, Inc. ("NYSE" 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

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

The proposed rule change would extend for one year a pilot to permit limit-at-the-close ("LOC") orders to be entered in any stock at any time during the trading day up to 3:40 p.m. on expiration days, and 3:50 p.m. on non-expiration days. The current pilot is scheduled to expire July 31, 1997.

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 self-regulatory organization 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 self-regulatory organization 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

A LOC order is one that is entered for execution at the closing price, provided that the closing price is at or within the limit specified. Originally, LOC orders could be entered only to offset published imbalances of market-on-close ("MOC") orders.³ LOC orders had to be entered by 3:55 p.m. on both expiration and non-expiration days, and could not be cancelled, except for legitimate errors.⁴

The Exchange recently implemented an amended policy regarding LOC orders to permit their entry at any time during the trading day up to 3:40 p.m. on expiration days,⁵ and 3:50 p.m. on non-expiration days.⁶ Thereafter, as with MOC orders, LOC orders could not be cancelled (except for legitimate errors), and could be entered only to offset published imbalances. These new procedures are part of the current pilot for LOC orders which expires at the end of July 1997.⁷

The Exchange is proposing to extend the LOC pilot for an additional year, until July 31, 1998, in order to study the effects of the new order entry procedures. The Exchange will make a recommendation at that time as to continuation of the pilot or a request for permanent status of LOC orders.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)⁸ 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, in general, to protect investors and

the public interest. The proposed rule change perfects the mechanism of a free and open market by providing investors with the ability to use LOC orders as a vehicle for managing risk at the close.

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

The Exchange represents that the proposed rule change will impose no burden on competition.

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

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

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-97-19 and should be submitted by August 20, 1997.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6⁹ and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove

³ A MOC order is a market order to be executed in its entirety at the closing price on the Exchange. See NYSE Rule 13. The NYSE pilot program for entry of MOC orders was permanently approved in 1996. See Securities Exchange Act Release No. 37894 (Oct. 30, 1996), 61 FR 56987 (Nov. 5, 1996).

⁴ See Securities Exchange Act Release No. 33706 (Mar. 3, 1994), 59 FR 11093 (Mar. 9, 1994) (order approving the original LOC pilot program).

⁵ The term "expiration days" refers to both (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently ("Expiration Fridays") and (2) the trading day on which end of calendar quarter index options expire ("QIX Expiration Days").

⁶ See Securities Exchange Act Release No. 37969 (Nov. 20, 1996), 61 FR 60735 (Nov. 29, 1996).

⁷ See Securities Exchange Act Release No. 37507 (July 31, 1996), 61 FR 40871 (Aug. 6, 1996).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.¹¹

This pilot program is part of an effort by the Exchange to institute safeguards to minimize excess market volatility that may arise from the liquidation of stock positions related to trading strategies involving index derivative products. For instance, since 1986, the NYSE has utilized auxiliary closing procedures on expiration days. These procedures allow NYSE specialists to obtain an indication of the buying and selling interest in MOC orders at expiration and, if there is a substantial imbalance on one side of the market, to provide the investing public with timely and reliable notice thereof and with an opportunity to make appropriate investment decisions in response.

The NYSE auxiliary closing procedures have worked relatively well and may have resulted in more orderly markets on expiration days. Nevertheless, both the Commission and the NYSE remain concerned about the potential for excess market volatility, particularly at the close on expiration days. Although, to date, the NYSE has been able to attract sufficient contra-side interest to effectuate an orderly closing, adverse market conditions could converge on an expiration day to create a situation in which member firms and their customers would be unwilling to acquire significant positions.

The Commission continues to believe preliminarily that LOC orders should provide the NYSE with an additional means of attracting contra-side interest to help alleviate MOC order imbalances both on expiration and non-expiration days. As a practical matter, the Commission believes that LOC orders will appeal to certain market participants who otherwise might be reluctant to commit capital at the close. Specifically, unlike a MOC order, which results in significant exposure to adverse price movements, a LOC order will allow each investor to determine the maximum/minimum price at which he or she is willing to buy/sell. To the extent that such risk management benefits encourage NYSE member firms and their customers to enter orders to offset MOC order imbalances of 50,000 shares or more, thereby adding liquidity to the market, the Commission agrees with the NYSE that LOC orders could become a useful investment vehicle for

curbing excess price volatility at the close.

The Commission also finds that the NYSE has established appropriate procedures for the balancing of LOC orders and that the NYSE's existing surveillance should be adequate to monitor compliance with those procedures. Because LOC orders will be required to yield priority to conventional limit orders at the same price, the Commission is satisfied that public customer orders on the specialist's book will not be disadvantaged by this proposal. In the Commission's opinion, the prohibition on cancelling LOC orders is consistent with the Exchange's auxiliary closing procedures and, like those procedures, should allow specialists to make a timely and reliable assessment of order flow and its potential impact on the closing price.

The Commission notes that the LOC order pilot program has been ongoing since 1994 and the NYSE has submitted detailed reports describing its experience with the pilot program. The Exchange represents that LOC orders have not been widely used and that the Exchange requires an additional year to educate members about LOC orders and to observe the use of LOC orders on the Exchange.¹² The Commission expects the Exchange to seek permanent approval of the procedures or to determine to discontinue the program, after the Exchange analyzes the data for the report due on May 31, 1998. If the Exchange decides to seek permanent approval of the pilot procedures, any such request should also be submitted to the Commission by May 31, 1998, as a proposed rule change pursuant to Section 19(b) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because there are no changes being made to the current provisions, which originally were subject to the full notice and comment procedures. In addition, accelerated approval would enable the Exchange to continue the program on an uninterrupted basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-NYSE-97-19) is approved, and accordingly, that

¹² Telephone conversation between Agnes Gautier, Vice President, Market Surveillance, NYSE and David Sieradzki, Attorney, Division of Market Regulation, SEC (July 16, 1997).

¹³ 15 U.S.C. 78s(b)(2).

the LOC pilot program is extended until July 31, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38864; File No. SR-Phlx-97-32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Respecting the Public Order Exposure System for PACE Orders

July 23, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 30, 1997, 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 self-regulatory organization. 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, pursuant to Rule 19b-4 under the Act,¹ proposes to amend Supplementary Material .05 of Rule 229, to reflect a 30 second order exposure time period, or "widow," in lieu of 15 seconds, and to title Supplementary Material .05 as the "Public Order Exposure System" or "POES," as it is known at the Exchange. The operation of the Philadelphia Stock Exchange Automatic Communications and Execution ("PACE") System is governed by Phlx Rule 229 ("PACE Rule"). PACE is the Exchange's automatic order routing and execution system for securities on the equity trading floor. Currently, Supplementary Material .05 to the PACE Rule provides that market orders are stopped for 15 seconds to provide an opportunity for price improvement, except where the market

¹¹ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 17 C.F.R. 200.30-3(a)(12).

¹⁵ 17 CFR 240.19b-4.