

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45838; File No. SR-NYSE-2001-40]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 and Amendment No. 2 Thereto, Regarding Method of Delivery of Annual Reports and Proxy Materials

April 26, 2002.

On October 11, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to specify that annual reports and proxy materials should be distributed in such format and by such methods as are permitted or required by applicable law and regulations (including any interpretations thereof by the Commission). On January 15, 2002,³ and March 5, 2002,⁴ the Exchange amended the proposal to make technical changes to its rule text.

The proposed rule change, as amended, was published for comment in the **Federal Register** on March 27, 2002.⁵ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁶ and, in particular, the requirements of Section 6 of the Act⁷ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act⁸ because it requires the Exchange's members to distribute annual reports and proxy materials in a manner that is consistent with federal securities laws. The Commission

believes such consistency should foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSE-2001-40), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-10867 Filed 5-1-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45824; File No. SR-Phlx-2001-63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to New Product Allocations

April 25, 2002.

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 18, 2001, 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 Phlx. On February 28, 2002, Phlx submitted Amendment No. 1 to the proposed rule change.³ On April 5, 2002, Phlx

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Linda C. Christie, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 26, 2002 ("Amendment No. 1"). In Amendment No. 1, Phlx: (1) proposed a definition of "new product"; (2) proposed a definition of "operating company" for purposes of the proposed rule change; (3) described the Exchange's current criteria for its Equity Allocation, Evaluation and Securities Committee's and the Options Allocation, Evaluation and Securities Committee's (collectively "Committees") consideration when allocating equity books and options classes and that these criteria would still apply if the proposed changes are approved; (4) represented that a specialist unit must be an eligible specialist unit to be allocated a new product under the proposed changes; (5) asserted that Phlx Rule 1023 may operate to prevent

submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Phlx proposes to amend Phlx Rule 511(b), Allocations, to permit the Committees to allocate a new product to a specialist unit that develops such new product or is instrumental in developing or bringing such new product to the Exchange without soliciting applications from any other specialist units.

The proposal would also permit the Committees, as a condition to allocating a book for any equity, option, or futures product that involves the licensing or other acquisition of an index, trademark, tradename, patent or other intellectual property, to: (1) Require a specialist unit to indemnify the Exchange and/or any third party against any potential liabilities associated with the product; (2) require a specialist unit to agree to pay the Exchange and/or any third party any amounts related to the product or use of the product; and (3) enter into any necessary agreements or undertakings with the Exchange and/or third party concerning the intellectual property, however, no such agreement or undertaking may confer any ownership or proprietary rights upon the specialist unit with respect to the intellectual property or the book.

The text of the proposed rule change follows. Additions are italicized.

* * * * *

Specialist Performance Evaluation Rule 511

(a) No change.

(b) Allocations.

* * * * *

(i) *New⁵ Product Specialist Unit Allocation. When an eligible specialist*

specialist from entering into certain types of business transactions; and (6) elaborated on the purpose behind the proposed changes involving licensing or acquisition of an index, trademark, tradename, patent, or other intellectual property.

⁴ See letter from Linda C. Christie, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 4, 2002 ("Amendment No. 2"). In Amendment No. 2, Phlx removed rule text stating that the proposed changes would take effect notwithstanding anything to the contrary in Phlx Rules 500 through 526 and amended rule text to clarify that the proposed definition of new product would only apply for purposes of proposed Phlx Rule 511(b).

⁵ The Commission notes that the proposed rule text will follow the current text of Phlx Rule 511(b). Telephone conversation between Linda S. Christie, Counsel, Phlx, and Frank N. Genco, Division, Commission, on April 19, 2002.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, from Darla C. Stuckey, Corporate Secretary, NYSE, dated January 11, 2002 ("Amendment No. 1").

⁴ See letter to Nancy Sanow, Assistant Director, Division, Commission, from Darla C. Stuckey, Corporate Secretary, NYSE, dated March 4, 2002 ("Amendment No. 2").

⁵ See Securities Exchange Act Release No. 45602 (March 20, 2002), 67 FR 14756.

⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

unit develops or is instrumental in developing or bringing a new product to the Exchange, the Committee may consider such fact as a conclusive factor in the allocation of the new product and may allocate the new product to such specialist unit without soliciting any other specialist units pursuant to Rule 506. For the purposes of this rule, a new product is anything other than common stock of an operating company, or options or futures on common stock of an operating company or straight debt of an operating company. An operating company, for purposes of this definition, is any issuer other than one which is or holds itself out as being engaged solely in the business of investing in securities; provided that operating company shall include any issuer referred to in Sections 3(b), 3(c)(2)(A), 3(c)(3), 3(c)(5), 3(c)(6), 3(c)(8) or 3(c)(9) of the Investment Company Act of 1940 or Rules 3a-2, 3a-5 and 3a-6 thereunder (17 CFR 270.3a-2; 17 CFR 270.3a-5 and 17 CFR 270.3a-6, respectively).

(ii) *Licensing or Other Acquisition of a Product.* In the case of any equity, options or futures product that involves the licensing or other acquisition of an index, trademark, tradename, patent or other intellectual property, the Committee may, as a condition of allocating the book, require a specialist unit (i) to indemnify and hold harmless the Exchange and/or any third party against any potential liabilities associated therewith and/or (ii) to pay or undertake to pay the Exchange and/or any third party any amounts related to the licensing of the product or any amounts related to the use of intellectual property; and/or (iii) to enter into any agreement or undertakings with the Exchange and/or any third party otherwise concerning the intellectual property; provided that no such agreement or undertaking shall confer upon such specialist unit any proprietary or ownership rights with respect to such intellectual property or the book.

(c) No change.

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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, as amended, 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

Currently, Phlx Rule 511(b) provides, among other things, certain criteria for the Committees' consideration when allocating equity books and option classes to specialist units.⁶ The criteria include: the number and type of securities in which the applicant is currently registered; the personnel, capital, and other resources of the applicant; and the results of the evaluations of specialists conducted pursuant to Phlx Rule 515. Additionally, Phlx Rule 506(b) requires an allocation application to be submitted in writing to the Exchange's designated staff and shall include, at a minimum, the name and background of the head specialist and assistant specialist(s), and the units experience and capitalization demonstrating an ability to trade the particular equity book or options class sought. The Committee may also require that an application include other information such as system/execution levels and guarantees. In addition, the designated Exchange staff person will provide to the Committee any other information that the Committee deems relevant.⁷

Phlx Rule 506(a) states in relevant part, "When an equity book or option class is to be allocated or reallocated by the Committee, the Committee will solicit applications from all eligible specialist units." The proposal would

⁶ Pursuant to Phlx Rule 501, Specialist Appointment, in order for a member organization to establish a specialist unit, an application by a member organization must be submitted and approved by the Committee. The application must include, among other things, the identity of the person who will act as head specialist, as well as those individuals who will act as assistant specialist. The application must also include the following: (1) the identity of the unit's staff positions and who will occupy those positions; (2) the unit's clearing arrangements; (3) the unit's capital structure, including any lines of credit; and (4) the unit's back-up arrangements endorsed by both parties providing the following support: a back-up specialist unit not associated with the specialist unit to provide staffing when necessary, and a substitute specialist unit not associated with the specialist unit (which may be the same as the back-up specialist unit), which shall serve as a substitute specialist unit in the event that the specialist unit is unable to perform the duties of a specialist. In short, the Exchange represents that securities can only be allocated to approved specialist units, even under this proposal.

⁷ The Exchange represents that the Committees will continue to consider the same or similar criteria when allocating new products under the proposed rule change.

give the Committees the ability to eliminate the requirement to solicit applications for a book if a specialist unit meets the proposed criteria respecting a particular new product. The Exchange represents that such specialist would, of course, have to be an eligible specialist unit. The proposal would also permit the Committees to require specialists to pay certain licensing fees, indemnify the Exchange and/or any third party, and enter into agreements regarding new product allocations.

(a) *New Product Specialist Allocation.*

The first aspect of the proposal would permit the Committees to allocate a new product⁸ to a specialist unit that develops a new product or is instrumental in developing or bringing a new product to the Exchange without soliciting applications from other specialist units. The Exchange believes that it is appropriate to modify the allocation process for specialist units meeting the proposed criteria for a new product. The purpose of the proposal is to provide an incentive and encourage specialist units to develop and bring new products to the Exchange floor, thereby increasing the amount of new investment products the Exchange may offer to the investing public. Further, the Exchange believes that the willingness of specialist units to invest the capital and other necessary resources associated with developing a new product or bringing a new product to the Exchange are factors the Committees should have the ability to consider as conclusive in allocating a new product. Although Phlx Rule 511(b) generally permits the Committee to consider various relevant factors, including product development, under the proposal, the Committee would be able (but not required) to view product development as a conclusive factor.

(b) *Licensing or Other Acquisition of a Product.*

The second aspect of this proposal would permit the Committee to require certain indemnifications and agreements regarding payment and intellectual property.⁹ Specifically, the proposed rule would permit the Committees to require a specialist unit allocated any equity, option or futures

⁸ Phlx proposes to define a new product for purposes of Phlx Rule 511(b)(i) as anything other than common stock of an operating company, or options or futures on common stock of an operating company or straight debt of an operating company.

⁹ Phlx notes that Phlx Rule 1023 may operate to prevent a specialist from entering into certain business transactions.

product that involves the licensing or other acquisition of an index, trademark, tradename, patent or other intellectual property to: (1) Indemnify and hold harmless the Exchange and/or any third party against any potential liabilities associated with the product; (2) agree to pay the Exchange and/or any third party any amounts related to the licensing of the product or use of intellectual property; and (3) enter into any agreements or undertakings with the Exchange and/or third party concerning the intellectual property; provided that no such agreement or undertaking shall confer upon such specialist any proprietary or ownership rights with respect to the intellectual property or the book.¹⁰ The Exchange believes that this, in turn, should cause the specialist unit to have a stronger financial stake in the success of the product, which may foster more aggressive marketing and market making.

The Exchange believes that the proposal balances the interests of the Exchange and the specialist units by encouraging the specialist units to actively participate and support the development and marketing of equity, options, and futures products. From a business standpoint, many products often involve strategic risks and rewards. The Exchange represents that the costs involved can be both burdensome and complex, including legal, audit, consulting, and marketing costs, as well as serious opportunity costs. Further, the liability and intellectual property issues can be equally complex. Thus, by helping to defray costs to the Exchange, assure that appropriate agreements are executed, and address issues related to intellectual property, the proposal is also intended to enable the Exchange to more readily list new products.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is 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 the investors and the public interest, because the benefit of allocating a new

product without solicitation is limited to those specialist units that develop a new product or are instrumental in developing or bringing a new product to the Exchange. Further, the proposed rule change, as amended, is designed to encourage specialist units to bring new products to the floor, thereby, increasing the amount of new products available to the investing public.

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

The Exchange does not believe that the proposed rule change, as amended, 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

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

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, as amended; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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, as amended, 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 the filing will also be available for inspection and copying at

the principal offices of the Exchange. All submissions should refer to File No. SR-Phlx-2001-63 and should be submitted by May 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-10869 Filed 5-1-02; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 4003]

Bureau of Educational and Cultural Affairs Request for Grant Proposal: Fulbright American Studies Institute on U.S. National Security: American Foreign Policy Formulation in an Era of Globalization

NOTICE: Request for Grant Proposal (RFGP).

SUMMARY: The Study of the U.S. Branch, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code Section 26 USC 501 (C)(3) may apply to develop and implement a post-graduate level Fulbright American Studies program designed for a multinational group of 15 experienced foreign educators and professionals entitled:

"U.S. National Security: American Foreign Policy Formulation in an Era of Globalization"

This program is intended to provide participants with a deeper understanding of American life and institutions, past and present, in order to strengthen curricula and to improve the quality of teaching about the United States at universities abroad. Programs should therefore be designed to elucidate the topic or theme of the Institute as well as American civilization as a whole.

The program will be four weeks in length and will be conducted during January and May of 2003.

The Bureau is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: political science, international relations, law, history, and/or other disciplines or sub-

¹⁰ If a specialist unit is unwilling to abide by these provisions, the Exchange would be able to solicit applications from other specialist units.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 17 CFR 200.30-3(a)(12).