

both larger than Strong International, and enjoys a lower management fee and lower overall expense ratio than Strong International.

## Conclusion

Applicants assert that the proposed Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and purposes of the 1940 Act and therefore request that the Substitution should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45995; File No. SR-NYSE-2002-20]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Initial Listing Fees for an Additional Class of Common Stock

May 29, 2002.

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 May 24, 2002, 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to approve the proposed rule change on an accelerated basis.

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

The Exchange proposes to amend Section 902.02 of the NYSE Listed Company Manual ("LCM") to provide that, at the time an issuer lists an additional class of common stock on the NYSE, the listed company will be charged a fixed initial listing fee of \$5,000 for that class instead of the per-share initial listing fee under the current original listing fee schedule. Presently,

Section 902.02 of the LCM provides that only tracking stocks of a listed company are charged a flat initial listing fee of \$5,000.

#### 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. The text of these statements may be examined at the places specified in Item III 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

The Exchange proposes to amend Section 902.02 of the LCM to provide that when an issuer lists an additional class of common stock, it will be charged a flat initial listing fee of \$5,000 for the additional class in lieu of the per-share fee schedule. Currently, Section 902.02 of the LCM specifies that only tracking stocks of a listed company are charged a flat initial listing fee of \$5,000.

In 2000, in response to listed companies' desires to utilize tracking stocks to achieve strategic and financial goals, the Exchange adopted the \$5,000 flat initial listing fee for tracking stocks.<sup>3</sup> Since adopting this flat fee for the initial listing of tracking stocks, the Exchange has noted that, from time to time, its listed companies issue additional classes of common stock other than tracking stocks. Because a tracking stock is itself an additional class of common stock, the Exchange has found it difficult to justify a material distinction in the initial listing fees between tracking stocks and other kinds of additional classes of common stock. In the Exchange's view, additional classes of common stock should be entitled to benefit from the same flat \$5,000 initial listing fee as is applicable to tracking stocks. The Exchange therefore believes that by broadening Section 902.02 of the LCM to apply to any additional class of common stock of a listed company, the Exchange will be

in a position to be more competitive and responsive to alternate capitalization structures, including tracking stocks and other additional classes of common stock.

The Exchange would like to clarify that the flat fee applies only when the additional class of common stock is first listed on the NYSE. The Exchange believes that the proposal is consistent with the treatment that has been afforded to tracking stocks, which are assessed fees under the regular fee schedules for both continuing annual fees and for the initial fees chargeable when issuing additional shares of an already listed class of stock.

###### 2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>4</sup> which provides that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, 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.

##### 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. 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. 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

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

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

<sup>3</sup> See Securities Exchange Act Release No. 43164 (August 16, 2000), 65 FR 51387 (August 23, 2000) (SR-NYSE-00-15) (noting that tracking stocks are categories of common stocks of an issuer that are intended to track the value of a portion of the issuer's business).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

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 the File No. SR-NYSE-2002-20 and should be submitted by June 27, 2002.

#### IV. Commission's Finding and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of Sections 6 of the Act<sup>5</sup> and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,<sup>6</sup> because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.<sup>7</sup>

The Commission finds that the NYSE's proposed flat fee of \$5,000 to issuers for an additional class of common stock is reasonable and equitable in that it allows other classes of common stock, in addition to tracking stocks, to benefit from a fixed initial listing fee in lieu of a per-share initial fee schedule. The Commission also believes that the proposal is consistent with the treatment that has been afforded to tracking stocks, a type of additional class of common stock, and should help the Exchange to be more competitive and responsive to alternate capitalization structures of its listed companies.

The NYSE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register** to enable its listed companies engaged in transactions to benefit from the broadened flat fee for the listing of an additional class of common stock as quickly as possible. The Commission agrees that the approval of this request would enable issuers to promptly benefit from the proposed rule change. As noted above, the Commission has previously approved an initial flat fee of \$5,000 for tracking stocks, a class of common stock, and therefore finds this proposal substantially similar, and consistent with the prior NYSE filing.<sup>8</sup>

Accordingly, 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**.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSE-2002-20) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46008; File No. SR-Phlx-2002-24]

#### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's Emergency Committee

May 30, 2002.

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 April 24, 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 and II below, which Items have been prepared by the Exchange. On May 20, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and approving 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 Exchange Rule 98, Emergency Committee ("Committee"), to expand the composition of the Committee to

include the Exchange's Off-Floor Vice Chairman, and to adopt previously amended text of the pilot program regarding Exchange Rule 98 on a permanent basis.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*.

\* \* \* \* \*

#### *Emergency Committee*

Rule 98. An Emergency Committee, consisting of the Chairman of the Board of Governors, the On-Floor Vice Chairman the Exchange, *the Off-Floor Vice Chairman of the Exchange*, and the Chairmen of the Floor Procedure, Options and Foreign Currency Options Committees, shall be established and authorized to determine the existence of extraordinary market conditions or other emergencies. When the Committee determines that such an emergency condition exists, the Committee may take any action regarding the following: (1) Operation of PACE, AUTOM, or any other Exchange quotation, transaction, reporting, execution, order routing or other systems or facility; (2) operation of, and trading on, any Exchange floor; (3) trading in any securities traded on the Exchange; and (4) the operation of members' or member organizations' offices or systems. Any member of the Emergency Committee may request the Committee to determine whether an emergency condition exists. If the Committee determines that such an emergency exists and takes action, the Committee shall prepare a report of this matter and submit it promptly to the Securities and Exchange Commission and submit it to the Board of Governors at the Board's next regular meeting.

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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 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> See note 3, *supra*.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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> This notice, representing Amendment No. 1, replaces the original Rule 19b-4 filing in its entirety.