

Advisers Act of 1940 by obtaining a blanket consent from a client to enter into agency cross transactions, provided certain disclosure is made to the client. Approximately 214 respondents utilize the rule annually, necessitating about 122 responses each year, for a total of 26,108 responses. Each response requires about .5 hours, for a total of 13,054 hours.

Rules 8b-1 through 8b-32 provide standard instructions to guide persons when filing registration statements under the Investment Company Act of 1940. Rules 8b-1 through 8b-32 impose burdens only in the context of the preparation of the various registration forms. Accordingly, no separate burden estimate is being submitted for Rules 8b-1 through 8b-32 and burden estimates are, or will be, made for each of the registration statement forms.

Direct general comments to the OMB Clearance Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms to David T. Copenhafer, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549, and SEC Clearance Officer, Office of Management and Budget, Paperwork Reduction Project 3235-0232 (Form 1-E); 3235-0243 (Rule 206(3)-2); 3235-0176 (Rules 8b-1 through 8b-32), Room 3208, New Executive Office Building, Washington, DC 20543.

Dated: April 3, 1995.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35591; File No. SR-Phlx-95-07]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to the Proposed Rule Change Relating to the Listing and Trading of Options and Long-Term Options on the Phlx USTOP 100 Index

April 11, 1995.

I. Introduction

On January 30, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to 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 provide for the listing and trading of index options on the Phlx USTOP 100 Index ("USTOP 100 Index" or "Index"). Notice of the proposal appeared in the **Federal Register** on February 20, 1995.³ The Exchange filed Amendment No. 1 to the proposed rule change on March 7, 1995,⁴ and Amendment No. 2 on March 17, 1995.⁵ This order approves the Exchange's proposal, as amended.

II. Description of Proposal

A. Composition of the Index

The Phlx proposes to list for trading options on the Phlx USTOP 100 Index, a new broad-based stock index to be calculated and maintained by the Phlx. The Index will be composed of 100 of the most highly capitalized, widely-held U.S. common stocks representing a variety of industries, including, but not limited to, technology, manufacturing, and the service industries. Ninety-four of the components in the Index are listed on the New York Stock Exchange ("NYSE") and six are Nasdaq National Market securities. All component stocks are "reported securities," as that term is defined in Rule 11Aa3-1 of the Act.⁶ The Phlx also proposes to list long-term Index options on the full-value Index ("Index LEAPS").⁷ Index LEAPS will trade independent of and in addition to regular USTOP 100 Index options traded on the Exchange; however, as discussed below, position and exercise limits of Index LEAPS and regular Index options will be aggregated. The Phlx

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1992).

³ See Securities Exchange Act Release No. 35326 (February 3, 1995), 60 FR 8104 (February 20, 1995).

⁴ In Amendment No. 1, the Phlx proposes to reset the starting value for the Index at 405.36 as of the opening on January 3, 1995, as opposed to 370 on December 14, 1994, as originally proposed. See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Brad Ritter, Senior Counsel, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated March 7, 1995 ("Amendment No. 1").

⁵ In Amendment No. 2, as discussed herein, the Phlx proposes to list long-term options on the Index. See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Brad Ritter, Senior Counsel, OMS, Division, Commission, dated March 17, 1995 ("Amendment No. 2").

⁶ See 17 CFR 240.11Aa3-1. A "reported security" is defined in paragraph (a)(4) of this rule as "any listed equity security or NASDAQ security for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan." A "transaction reporting plan" is defined in paragraph (a)(2) of this rule as "any plan for collecting, processing, making available or disseminating transaction reports with respect to transactions in reported securities filed with the Commission pursuant to, and meeting the requirements of, this section."

⁷ See Amendment No. 2, *supra* note 5.

will use a capitalization-weighted methodology to calculate the value of the Index.⁸

As of the close of trading on March 6, 1995, the Index was valued at 427.98.⁹ As of January 23, 1995, the market capitalizations of the individual securities in the Index ranged from a high of \$86.12 billion to a low of \$7.61 billion, with the mean being \$20.66 billion. The market capitalization of all the securities in the Index was approximately \$2.07 trillion. The total number of shares outstanding on that date for the stocks in the Index ranged from a high of 557.2 million shares to a low of 15.7 million shares. In addition, the average daily trading volume in the U.S. of the stocks in the Index for the six-month period from July 1, 1994, through December 31, 1994, ranged from a high of 3.06 million shares per day to a low of 207,795 shares per day. Finally, as of January 23, 1995, no one component accounted for more than 4.17% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 17.28% of the Index's value. The percentage weighting of the lowest weighted component on that date was 0.37% of the Index and the percentage weighting of the five smallest issues in the Index accounted for 1.99% of the Index's value.

B. Maintenance

The Index will be maintained by the Phlx. The Phlx will make special adjustments to the securities comprising the Index to reflect such events as stock splits or reverse splits, spinoffs, stock dividends, reorganizations, recapitalizations, and similar events, upon their occurrence. In accordance with Phlx Rule 1009A, if any change in the nature of any stock in the Index occurs as a result of delisting, merger, acquisition or otherwise, the Exchange will take appropriate steps to delete that stock from the Index and replace it with another stock which the Exchange believes would be compatible with the intended market character of the Index. In making replacement determinations, the Exchange will also take into account the capitalization, liquidity, and volatility of a particular stock.

The Exchange represents that all of the stocks comprising the Index currently are options eligible¹⁰ and

⁸ See *infra* Section II.D, entitled "Calculation of the Index," for a description of this calculation method.

⁹ See Amendment No. 1, *supra* note 4.

¹⁰ The Phlx's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other

have standardized options listed on them. If at any time, less than 90% of the components in the Index, by weight, are options eligible, the Exchange will submit a Rule 19b-4 filing for Commission approval before opening any new series of options on the Index for trading. Further, the Exchange will submit a Rule 19b-4 filing for Commission approval prior to opening any new series of options on the Index if the number of stocks in the Index ever increases to more than 120 or decreases to less than 80.

C. Applicability of Phlx Rules Regarding Index Options

Except as modified by this order, Phlx Rules 1000A through 1103A, in particular, and Phlx Rules 1000 through 1070, in general, will be applicable to USTOP 100 Index options and Index LEAPS.

D. Calculation of the Index

The value of the USTOP 100 Index will be calculated using a capitalization-weighted methodology. The representation of each security in the Index will be proportional to the security's last sale price multiplied by the total number of shares outstanding, in relation to the total market value of all of the securities in the Index. The initial value of the Index was set to equal 405.36 index and reflects changes in the prices of the Index component securities relative to the Index's base date of January 3, 1995.¹¹ The formula for calculating the value of the Index is as follows:¹²

Current Index Value equals

$$\frac{(MV_1) + (MV_2) + \dots + (MV_{100})}{\text{Divisor}} \text{ and multiplied by } 100$$

Where:

MV=Price x Shares outstanding for each component of the Index

Divisor=Number calculated to achieve a base value of 405.36 for the Index as of the opening of trading on January 3, 1995.

things, meet the following requirements: (1) the public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume in the U.S. must have been at least 2.4 million over the preceding twelve months; and (4) the U.S. market price must have been at least \$7.50 for a majority of the business days during the preceding three calendar months. See Phlx Rule 1009, Commentary .01.

¹¹ See Amendment No. 1, *supra* note 4.

¹² The formula for calculating the value of the Index is the same as that previously approved by the Commission for calculating the value of the Phlx Big Cap Index. See Securities Exchange Act Release No. 33973 (April 28, 1994), 59 FR 23245 (May 5, 1994). Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on February 2, 1995.

The Index divisor will be adjusted for changes in the capitalization of any of the component securities resulting from mergers, acquisitions, delistings, substitutions, and other like corporate events. The formula for adjusting the divisor is as follows:

Divisor equals to Total Capitalization (as a result of adjustments) divided by Old Index Value

The Index value will be updated dynamically at least once every 15 seconds during the trading day. The Phlx has retained Bridge Data, Inc. to compute the value of the Index. Pursuant to Phlx Rule 1100A, updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority ("OPRA"). The Index value will also be available on broker/dealer interrogation devices to subscribers of the option information.

The Index value for purposes of settling outstanding regular Index options and Index LEAPS contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component securities in their primary market on the last trading day prior to expiration. In the case of securities traded on and through Nasdaq, the first reported sale price will be used. Once all the component stocks have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options and Index LEAPS contracts. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, normally Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a component security for purposes of determining the settlement value of the Index, the Phlx will wait until the end of the day on the last trading day before expiration.¹³

E. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options.¹⁴ Standard options trading hours (9:30 a.m. to 4:10 p.m. Eastern Standard time) will apply to the contracts. The Index multiplier will be 100. Strike prices will be set at 5.0 point

¹³ Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on March 16, 1995.

¹⁴ A European-style option can be exercised only during a specified period before the option expires.

intervals except exercise prices in the far-term series (*i.e.*, nine months to expiration) shall be set in 25.0 point intervals unless demonstrated customer interest exists at 5.0 point intervals.¹⁵ Additional exercise prices will be added in accordance with Phlx Rule 1101A(a). Demonstrated customer interest will include institutional (firm), corporate or customer interest expressed directly to the Exchange or through the customer's floor brokerage unit but not interest expressed by a registered option trader ("ROT") with respect to trading for the ROT's own account.¹⁶

In addition, pursuant to Phlx rule 1012(a), there may be up to six expiration months outstanding at any given time. Specifically, there may be up to three expiration months from the March, June, September, and December cycle plus up to three additional near-term months so that the two nearest term months will always be available.

The Exchange also intends to list several Index LEAPS series that expire from 12 to 36 months from the date of issuance pursuant to Phlx Rule 1101A(b)(iii).¹⁷

F. Position and Exercise Limits, Margin Requirements, and Trading Halts

Position limits for the Index will be set at 25,000 contracts on the same side of the market, provided that no more than 15,000 of such contracts are in series in the nearest term expiration month.¹⁸ Exercise limits will be set at the same level as position limits.¹⁹ Positions in Index LEAPS will be aggregated with positions in regular Index options on a one-for-one basis for purposes of position and exercise limits.²⁰ Exchange rules applicable to options on the Index will be identical to the rules applicable to other broad-based index options for purposes of

¹⁵ The limitations applicable to the listing of 25.0 point strike price intervals will be the same as those applicable to the listing of 25.0 point strike price intervals on far-term index option series listed on the Exchange's Big Cap Index. See Securities Exchange Act Release No. 34233 (June 17, 1994), 59 FR 32731 (June 24, 1994) ("Exchange Act Release No. 34233").

¹⁶ Exchange Rule 1101A, Commentary .02, which already permits 25.0 point intervals in far-term series for the Exchange's other broad-based indexes will be amended to include this treatment for the USTOP 100 Index.

¹⁷ See Amendment No. 2 *supra* note 5. The Exchange has also submitted a proposal to increase the maximum term to maturity for index LEAPS from 36 months to 60 months for all of its options approved indexes. See Securities Exchange Act Release No. 35376 (February 14, 1995), 60 FR 9880 (February 22, 1995).

¹⁸ See Phlx Rule 1001A(a)(i).

¹⁹ See Phlx Rule 1002A.

²⁰ See Amendment No. 2, *supra* note 5.

trading rotations, halts, and suspensions,²¹ and margin treatment.²²

G. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in Index options and Index LEAPS. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.²³

III. Findings and Conclusions

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 6(b)(5).²⁴ In particular, the Commission finds that the Index is broad-based, the proposed Index options and Index LEAPS are designed to reduce the potential for manipulation, and the proposal to list and trade options on the USTOP 100 Index is consistent with the Exchange's obligation to promote investor protection.

The Commission finds that the trading of options on the Index will permit investors to participate in the price movements of the 100 securities on which the Index is based. Further, trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission believes the USTOP 100 Index options and Index LEAPS will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of 100 of the largest and most widely-held U.S. common stocks. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of Index options will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.²⁵

The trading of Index options and Index LEAPS on the USTOP 100 Index, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, however, for the reasons discussed below, that the Phlx adequately has addressed these concerns.

A. Index Design and Structure

The Commission finds that the USTOP 100 Index is a broad-based index, and thus it is appropriate to permit Exchange rules applicable to the trading of broad-based index options to apply to the Index options and Index LEAPS. Specifically, the Commission believes the Index is broad-based because it contains 100 actively-traded stocks representing over 35 industry groups, and thus reflects a substantial segment of the U.S. equities market.

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component securities significantly minimize the potential for manipulation of the Index. First, the Index represents and consists of the common stock values of 100 actively traded U.S. companies. Second, the overwhelming majority of the components that comprise the Index are actively traded, with an average daily trading volume for the period from July 1, 1994 through December 31, 1994, ranging from a high of 3.06 million shares per day to a low of 207,795 shares per day. Third, the market capitalizations of the securities in the Index are extremely large, ranging from a high of \$86.12 billion to a low of \$7.61 billion as of January 23, 1995, with the mean being \$20.67 billion. Fourth, no one particular security or

²¹ See Phlx Rule 1047A.

²² See Phlx Rules 722 and 1000A.

²³ The Intermarket Surveillance Group ("ISG") was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the American Stock Exchange, Inc. ("Amex"); the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. ("NASD"); the NYSE; the Pacific Stock Exchange, Inc.; and the Phlx. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

²⁴ 15 U.S.C. 78f(b)(5) (1988 & Supp. V 1993).

²⁵ Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed Index options and Index LEAPS will provide investors with a hedging vehicle that should reflect the overall movement of the 100 component stocks.

group of securities dominates the Index. Specifically, as of January 23, 1995, no one stock accounted for more than 4.17% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for only 17.28% of the Index's value. Fifth, all of the components in the Index have standardized options trading on them and the Phlx will maintain the Index so that at least 90% of the securities in the Index, by weight, are eligible for standardized options trading. This proposed maintenance requirement will ensure that the Index is substantially comprised of options eligible securities.²⁶ Sixth, the Index is comprised of stocks representing a diverse group of industries. Finally, the Commission believes that, as discussed below, existing mechanisms to monitor trading activity in the component securities will help deter as well as detect illegal trading activity involving the Index options and Index LEAPS.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as USTOP 100 Index options and Index LEAPS, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the Phlx, the Commission believes that adequate safeguards are in place to ensure the protection of investors in USTOP 100 Index options and LEAPS.²⁷

²⁶ Moreover, the Commission notes that if the Phlx increases the number of component securities to more than 120 or decreases that number to less than 80, the Phlx will be required to seek Commission approval pursuant to Section 19(b)(2) of the Act before listing new strike price or expiration month series of USTOP 100 Index options or Index LEAPS.

²⁷ The Commission also believes that the portion of the Exchange's proposal allowing 25.0 point strike price intervals for far-term option series strikes a reasonable balance between the Exchange's interest in limiting the number of outstanding strike prices in inactive far-term series and its interest in accommodating the needs of investors. In addition, the Commission believes that the provision allowing the Exchange to list additional far-term

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a security index derivative product and the exchange(s) trading the securities underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the security index product less readily susceptible to manipulation.²⁸ In this regard, the Phlx, NYSE, Amex, and NASD are all members of the ISG, which provides for the exchange of all necessary surveillance information.²⁹

D. Market Impact

The Commission believes that the listing and trading of USTOP 100 Index options and Index LEAPS on the Phlx will not adversely impact the underlying securities markets.³⁰ First, as described above, the Index is broad-based and composed of 100 stocks with no one stock dominating the Index. Second, because (i) at least 90% of the numerical value of the Index must be accounted for by securities that meet the Exchange's options listing standards, (ii) each of the component securities must be traded on either the NYSE or the Amex, or traded through Nasdaq as National Market securities, and (iii) the component securities must be subject to last sale reporting pursuant to Rule 11Aa3-1 of the Act,³¹ the component securities generally will be actively-traded, highly-capitalized securities. Third, the 25,000 contract position and exercise limits, along with the 15,000

series at 5.0 point intervals in response to genuine customer requests should provide the Exchange with the flexibility to meet the needs of investors and, in turn, should allow investors to establish options positions that are tailored to meet their investment objectives. The Commission expects the Exchange to monitor the listing of additional strikes in order to ensure that new strikes are added only in response to genuine customer requests. See Exchange Act Release No. 34233, *supra* note 15 and Exchange Rule 1101A, Commentary .02.

²⁸ Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

²⁹ See *supra* note 23.

³⁰ In addition, the Phlx has represented that the Phlx and the OPRA have the necessary systems capacity to support those new series of options that would result from the introduction of Index options and Index LEAPS. See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Brad Ritter, Senior Counsel, OMS, Division, Commission, dated February 2, 1995; and Memorandum from Joe Corrigan, Executive Director, OPRA, to Jamie Farmer, New Product Development, Phlx, dated January 31, 1995.

³¹ See *supra* note 6.

contract telescoping requirement, will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party performance will be minimized because the Index options will be issued and guaranteed by The Options Clearing Corporation just like any other standardized option traded in the United States. Fifth, existing Phlx stock index options rules and surveillance procedures will apply to options on the USTOP 100 Index.

Lastly, the Commission believes that settling expiring USTOP 100 Index options and Index LEAPS based on the opening prices of component securities is consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for securities underlying options on the Index.³²

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 merely changes the initial value of the Index. Because this amendment is being made prior to commencement of trading of Index options and Index LEAPS, the Commission believes that this change will not create any potential for investor confusion and therefore does not raise any new regulatory concerns.

Amendment No. 2 allows the Phlx to list Index LEAPS in addition to regular Index options. Because the proposed Index LEAPS will be subject to the same rules governing Index options and because positions in Index LEAPS will be aggregated with those in Index options for purposes of position and exercise limits, the Commission believes that Amendment No. 2 does not raise any regulatory concerns not already addressed by the Exchange, as discussed above.

Accordingly, the Commission believes it is consistent with section 6(b)(5) of the Act to approve Amendment Nos. 1 and 2 to the Phlx's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2. 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

³² See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

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 Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principle office of the Phlx. All submissions should refer to the File No. SR-Phlx-95-07 and should be submitted by May 9, 1995.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,³³ that the proposed rule change (SR-Phlx-95-07), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-9458 Filed 4-17-95; 8:45 am]

BILLING CODE 8010-011-M

[Release No. 34-35597; File No. SR-NYSE-95-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. (Relating to Adoption of Rule 440A ("Telephone Solicitation—Recordkeeping") and an Interpretation with Respect to Proposed Rule 440A

April 12, 1995.

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 March 22, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 NYSE is herewith filing a proposed rule change to adopt new Rule 440A ("Telephone Solicitation—Recordkeeping") and to add an

interpretation with respect to the meaning and administration of proposed Rule 440A.

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 IV 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

The purpose of the proposed rule change is to:

(1) Adopt a rule requiring members and member organizations that engage in telephone solicitations to maintain a centralized list of persons who do not wish to receive telephone solicitations; and

(2) Set forth an interpretation concerning the meaning and administration of proposed Rule 440A with respect to compliance with Federal Communications Commission ("FCC") and SEC rules relating to telemarketing practices. It is intended that the interpretation will be published as an Interpretation Memorandum for inclusion in the Exchange Interpretation Handbook.

In 1994, an industry Task Force, comprised of representatives from the Exchange, and other industry regulatory and self-regulatory organizations, was formed to review broker-dealer telemarketing practices and compliance with the Telephone Consumer Protection Act of 1991 ("TCPA") and the FCC rules and regulations implementing that law. The TCPA and FCC rules address telemarketing practices and the rights of telephone customers. One of those requirements is that businesses (which includes broker-dealers) that make telephone solicitations to residential telephone subscribers must institute written policies and have procedures in place for maintaining "do-not-call" lists.

The industry Task Force is considering several initiatives relating to broker-dealers that engage in telephone solicitation or "cold-calling"

activities. One such initiative is proposed Rule 440A which requires members and member organizations to make and maintain a centralized list of persons who have informed the member or member organization that they do not want to receive telephone solicitations. It is anticipated that such a rule will also be adopted by other self-regulatory organization participants of the Task Force.

The proposed interpretation to Rule 440A reminds members and member organizations that they are subject to compliance with the requirements of the relevant rules of the FCC and SEC relating to telemarketing practices and the rights of telephone consumers.

2. Statutory Basis

The proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act, which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, in that it addresses the practices of Exchange members and member organizations who make telemarketing calls and the protection of customers who have indicated a desire not to receive such calls.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such other 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 self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

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

³³ 15 U.S.C. 78s(b) (2) (1988).

³⁴ 17 CFR 200.30-3 (a) (12) (1994).