

agency orders.⁶ Moreover, a specialist may retain priority over a professional order provided it is displaying its interest, including the size, over the quotation system ("Specialist Priority Rule"). Specialists, however, are always required to give precedence (*i.e.*, yield) to agency orders.⁷ On the other hand, under the current CHX rules, agency orders do not have priority over professional orders, and professional orders that have established time priority are not required to give precedence to agency orders.⁸

The Exchange believes that the interplay among the Specialist Priority Rule, the Best Rule, and the Exchange's other rules of priority and precedence⁹ often results in the unintended anomaly of providing the professional order the benefit of the Best Rule and/or the specialist being unable to retain priority over professional orders as provided in the Specialist Priority Rule. For example, assume a specialist accepts a professional order for his book and thereafter an agency order is entered on the book at the same price. If the agency order is due a fill under the Best Rule because of prints in the primary market, the professional order must also be filled because it has higher (*i.e.*, time) priority in the book. Moreover, assume a specialist bid is entered first in time and thereafter a professional order and an agency order at the same price are entered respectively. Under the current rules, even if the specialist's bid may

retain priority over the professional order and only has to yield to the public agency order at the same price, in this situation the specialist bid must yield to both orders because the professional order has time priority over the public agency order.

The Exchange states that due to this anomaly, specialist are hesitant to accept professional orders. The Exchange proposes to add interpretation and policy .05 to Rule 2 of Article XXX of the Exchange's Rules to give specialists an incentive to accept professional orders for inclusion in the book.

Currently, as well as under the proposed rule change, when a professional order "has the post," (*i.e.*, is the highest priority order in the specialist's book at a given price), the professional order would not be required to yield precedence to an agency order at the same price that has not established time priority over the professional order. Under the proposal, however, in the event that the agency order is due a fill under the Exchange's Best Rule, the agency order would be filled even though the professional order, which has a higher priority on the book, is not filled. Therefore, although an incoming MAX order will be filled against the professional order and not against subsequently entered agency orders that have not established time priority, if the subsequently entered agency orders are due a fill under the Best Rule, the agency orders would be executed without filling the professional order, which only has post protection.

Moreover, under the proposed rule change if a specialist's own order has the post (*i.e.*, an order that originates with the specialist as dealer is the highest priority order in the specialist's book at a given price) and a professional order and an agency order are subsequently entered in the book at the same price, the professional order must yield precedence to the agency order if the specialist's own order yields precedence to the agency order. Therefore, the specialist bid second, and the professional order third. This proposed interpretation and policy is intended to allow the agency order to displace the specialist's order while at the same time allow the specialist's order to retain priority over the professional order in accordance with the Specialist Priority Rule.

III. Discussion

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, with the requirements of Section 6(b).¹⁰ The Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is consistent with the requirements of the Act because it may contribute to the depth and liquidity of the CHX market if, as the CHX suggests, more order flow is attracted to the Exchange. The Commission notes that the Exchange has represented that the proposed rule change does not affect the primary market protection afforded to agency orders under the Exchange's Best Rule, affect the standing of agency orders in relation to a dealer's orders for its own account, or modify the conditions under which a specialist's bid may retain priority over a professional order. In addition, the Exchange has represented to the Commission that the proposed rule change will not affect the application of the Exchange's current quote dissemination policy, which requires all customer limit orders, regardless of priority, to be displayed in the CHX specialist's quote when the customer order improves the specialist's quote or the national best bid or offer. The Commission, therefore, believes that the rule change will not disadvantage public agency orders.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-CHX-95-18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

[FR Doc. 95-1032 Filed 1-23-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36731; File No. SR-NYSE-95-41]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Vendor Service Administrative Fee

January 17, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

⁶ Professional market orders with a "Z" designator receive automatic executions based on the CHX's Best Rule. The Z designator may be used by an order sending firm after it negotiates with the specialist and the specialist agrees to accept the firm's professional orders for automatic execution on the CHX's automated order routing and execution system ("MAX"). Limit orders sent with the "Z" designator will be represented on the specialist's book as professional orders and do not receive the benefits of the Best Rule. Securities Exchange Act Release No. 35505 (Mar. 17, 1995), 60 FR 15613 (Mar. 24, 1995) (File No. SR-CHX-95-09).

⁷ See CHX Article XXX, Rule 2.

⁸ With regard to the display of limit orders, however, the Exchange has represented to the Commission that all bids and offers that improve the current CHX quote are displayed in the revised CHX quotation. Telephone conversation between George Simmon, Craig Long, and David Rusoff, Foley & Lardner, and Holly Smith, Ivette Lopez, Glen Barrentine, and Jennifer Choi, Division of Market Regulation, SEC, on December 19, 1995. See also CHX Rule 7, Article XX. Therefore, assuming that the primary market quote in XYZ is 20 $\frac{1}{4}$ -20 $\frac{1}{2}$, if a professional order to buy 1,000 shares of XYZ at 20 $\frac{1}{4}$ was entered at 9 a.m. and a public agency order to buy 1,000 of XYZ at 20 $\frac{1}{4}$ was entered at 9:05 a.m., the CHX specialist quotation would show at least 2,000 shares of XYZ at 20 $\frac{1}{4}$.

⁹ See CHX Article XX, Rules 15 (Precedence of Bids); 16 (Precedence of Bids at Same Price); 17 (Precedence of Offers); 18 (Precedence of Offers at Same Price); 19 (Precedence of Offers to Buy "Seller's Option"); and 20 (Claim of Prior or Better Bid).

("Act"),¹ notice is hereby given that on December 19, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Item 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

Effective October 1, 1995,² the NYSE proposes to retroactively decrease the Vendor Service Administrative Fee and change how this fee is calculated. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

Administrative Fee
(Annual Fee)

Vendor Service Administrative Fee

[Pass Through plus \$900 per Terminal]
Pass Through plus \$480 per ITPN user*
*Pass Through plus \$480 per Terminal for non-ITPN distributed product***

*An "ITPN" is a member or person associated with a member, who has been entitled to receive one or more third party market data vendor service offerings via the Exchange's Integrated Technology Program Network.

**It should be noted that the Exchange is in the process of migrating all services to the ITPN distribution method. Therefore, the terminal vs user distinction is only temporary, pending completion of the migration.

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 Exchange provides administrative support for members and member organizations who wish to receive third party market data vendor services on the Trading Floor. This administrative support includes arranging for subscriptions, installations, repairs, and training as well as billing validation and payment. A fee is charged to members and member organizations for such administrative services. The purpose of the proposed rule change is to reduce this administrative fee and change how it is calculated.

The Vendor Service Administrative Fee is composed of third party market data vendor pass through fees and the Exchange's fee for administrative services rendered. The Exchange, on behalf of its members, recently negotiated a reduction in the pass through fees charged to members by third party market data vendors. To complement this reduction, the Exchange is reducing its portion of the Vendor Service Administrative Fee from \$900 per third party market data terminal to, depending on the circumstances, \$480 per terminal for those users who receive third party market data services by means of their own terminals or terminals leased from third party market data vendors.

The Exchange also proposes to alter the methodology for calculating the NYSE's administrative fee for those users receiving third party market data vendor services via the Exchange's ITPN.³ Instead of basing the fee on the number of third party market data terminals owned or leased by a member, the proposal assesses the fee for ITPN distributed services based on the number of ITPN usernames associated with a member that are entitled to access third party market data vendor services through any of the terminals on the Floor of the Exchange.⁴

The Exchange notes that it is in the process of migrating all of the third party market data vendor services received by members and member organizations on the Floor of the

³ ITPN stands for "Integrated Technology Program Network."

⁴ In addition to third party market data vendor services, the ITPN offers users a number of additional services. The Exchange will not assess an administrative fee on a username that allows access to these additional services unless the username also allows access to third party market data vendor services. Telephone conversation between Santo A. Famularo, NYSE, and Anthony P. Pecora, Attorney, SEC (Jan. 11, 1996).

Exchange to the ITPN distribution method.⁵ After the migration is completed, the Exchange component of the Vendor Service Administrative Fee will be based solely on the number of ITPN usernames associated with a member that are entitled to concurrent access to third party market data vendor services.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act⁶ in general and furthers to objectives of section 6(b)(4)⁷ in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The proposed rule change does not 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

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A) of the Act⁸ and subparagraph (e) of Rule 19b-4 thereunder.⁹

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such actions is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions

⁵ The Exchange anticipates that all third party market data vendor terminals will be removed from the Floor by June 1996. Telephone conversation between Santo A. Famularo, NYSE, and Anthony P. Pecora, Attorney, SEC (Dec. 21, 1995).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(e).

¹ 15 U.S.C. 78s(b)(1).

² Although the effective date of the Vendor Service Administrative Fee for billing purposes is October 1, 1995, the Commission notes that this fee will not be invoiced until the end of January 1996.

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 Section, 450 Fifth Street, NW., Washington, DC, 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-95-41 and should be submitted by February 14, 1996.

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

Margaret H. McFarland,
Deputy Secretary

[FR Doc. 96-10333 Filed 1-23-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36728; File No. SR-Phlx-95-60]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Change Relating to Alternate Specialists

January 17, 1996.

I. Introduction

On September 15, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "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 amend Phlx Rule 202A, which addresses the responsibilities of Alternate Specialists. On November 1, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.³

The proposed rule change and Amendment No. 1 were published for comment in Securities Exchange Act Release No. 36457 (Nov. 3, 1995), 60 FR 57028 (Nov. 13, 1995). No comments were received on the proposal. On December 27, 1995, the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change.⁴

This order approves the proposed rule change, including Amendment No. 2 on an accelerated basis.

II. Description of Proposal

An Alternate Specialist is a registered Phlx specialist, who with regard to certain assigned issues has agreed generally to supplement the market making activities of Exchange primary specialists. When called in to participate by the specialist or a Floor Official, Alternate Specialists assist the primary specialists in executing public orders during periods of unusual or heavy trading in a particular issue.⁵ Phlx Rule 202A sets forth the requirements and responsibilities of Alternate Specialists. Currently, equity specialists are permitted to trade in an Alternate Specialist capacity all securities traded on the equity floor.

Phlx rule 202A imposes certain trading obligations upon Alternate Specialists pursuant to section 11 of the Act and the rule thereunder⁶ as well as

30, 1995. In Amendment No. 1, the Exchange clarified that the "50% of quarterly opening share volume" requirement has been replaced with "50% of quarterly trade volume."

⁴ See letter from Gerald O'Connell, First Vice President, Phlx, to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated December 20, 1995. In Amendment No. 2, the Exchange clarified that the Alternate Specialist must clear the post before sending an order via ITS to obtain credit for the 50% on-floor requirement. Amendment No. 2 also withdrew the proposal to permit Alternate Specialists to count towards the 50% on-floor requirement unexecuted orders of 500 or more shares placed with the specialist on the Exchange at a price on or in-between the consolidated market and maintained on the book for an extended period of time.

⁵ Phlx specialists and Alternate Specialists qualify for favorable margin treatment under Regulation T. Under Rule 12 of Regulation T, a creditor may extend good faith margin for any long or short position in a security in which a specialist makes a market. See 12 CFR 220.12(b)(3). Regulation T defines "good faith margin" as the amount of margin which a creditor, exercising sound credit judgment, would customarily require for a specified security position and which is established without regard to the customer's other assets or securities positions held in connection with unrelated transactions. See 12 CFR 220.2(k).

⁶ 15 U.S.C. 78k. Generally, section 11(b) of the Act governs specialist rights and obligations. In particular, Rule 11b-1(a)(2) under the Act provides that the rules of an exchange concerning specialist registration must include provisions on the following: (1) Minimum capital requirements; (2) requirements that the specialist engage in a course of dealing for his own account that will assist in

financial responsibility and reporting requirements. An Alternate Specialist is obligated under Rule 202A to effect all of his transactions in securities on the Exchange so that they constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. Moreover, an Alternate Specialist at the request of a floor broker must make a bid or offer in any security to which he is assigned or in which he is then trading such that a transaction effected thereon will contribute to the maintenance of a fair and orderly market.

The current rule also provides the criteria for qualifying and maintaining the status of an Alternate Specialist. Under the rule, 50% of an alternate Specialist's quarterly share volume (excluding share volume in securities in which he is registered as specialist) must be in issues to which he is assigned. Moreover, 50% of the quarterly share volume that creates or increases a position ("opening") in an Alternate Specialist account must result from transactions consummated on the Exchange.

Finally, the current rule contains several provisions that focus on the Alternate Specialist's participation on openings and after the opening and the handling of orders. Supplementary Material .06 to Phlx Rule 202A provides that alternate Specialists as a group are entitled to participate in opening a security on the Exchange with equal standing with respect to any net imbalance (after specialist participation) of purchase and sale orders on the exchange. Moreover, pursuant to Supplementary Material .07 to Phlx Rule 202A, following the opening, when the bids or offers of one or more Alternate Specialists are equal in price to those of the specialist, the Alternate Specialists as a group are entitled to participate in the transactions effected thereon to the extent of one-third of the total shares involved (excluding those needed to satisfy public orders). Pursuant to Supplementary Material .09 to Rule 202A, an Alternate Specialist must also accept and guarantee execution of all 100 share agency orders to which his assignment extends that

the maintenance of a fair and orderly market and that substantial, continued failure to meet these requirements will result in suspension or cancellation of the specialist's registration in his specialty stock(s); (3) provisions restricting the specialist's dealings to those necessary to maintain a fair and orderly market or to act as an odd-lot dealer; (4) provisions stating the responsibilities of the specialist as broker; and (5) procedures for the effective and systematic surveillance of specialist activities. Phlx Alternate Specialists are considered specialists as envisioned by Section 11 of the Act.

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 Gerald D. O'Connell, First Vice President, Phlx, to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated October