

should investigate the basis for its assumptions regarding the public ownership of shares and number of shareholders just prior to selecting the option and just prior to trading the option, utilizing a worst case analysis in making its assumptions that the Restructure Security will meet these listing standards.

In addition, other exchanges will continue to have the opportunity to challenge the certification by demonstrating that the Restructure Security will not meet the initial listing criteria with respect to public ownership and holders. The Commission believes that this provision provides an important check and should help to ensure that no unqualified securities are listed for options trading.

The Commission also believes that it is appropriate for an exchange to apply the "lookback" provision, to determine if a Restructure Security will satisfy the Maintenance Price Test. The Commission believes that it is appropriate to use the market price history of the Original Security, as well as any "when issued" trading in the Restructure Security for such calculations, provided that they are only used for determining price history for the period prior to commencement of trading in the Restructure Security.

The Commission notes that because the Maintenance Price Test is calculated on a rolling forward basis, "when issued" trading history for the Restructure Security or trading history for the Original Security prior to the ex-date may be used for maintenance calculations for no more than six months after the ex-date for the Restructure Security. For example, in order to satisfy the Maintenance Price Test for a Restructure Security on April 1, 1996, with an ex-date of February 1, 1996, an exchange may elect to base its determination on the trading price of the Original Security from October 1, 1995 through January 15, 1996, the trading price in the when-issued market for the Restructure Security from January 16, 1996 through January 31, 1996, but must use the "regular way" trading price in the Restructure Security from February 1, 1996 through April 1, 1996.

The Commission believes that it is appropriate not to rely on the trading volume of the Original Security in satisfying the Maintenance Volume Test, because the trading volume of the Restructure Security must solely satisfy the initial listing requirements for trading volume before it is eligible for options trading.

The Commission finds good cause for approving the proposed rule change by

the PSE and the NYSE prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, the Commission notes that the PSE's and NYSE's proposed rule changes are substantively similar to those proposed by the CBOE, Amex, and Phlx. The PSE and NYSE rule change proposals raises no issues that are not raised by the other exchanges. Additionally, the Commission notes that the CBOE, Amex, and Phlx proposals were subject to a full notice and comment period, and no comments were received. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve PSE's and NYSE's proposed rule changes on an accelerated basis.

The Commission also finds good cause for approving CBOE Amendment Nos. 1 and 2, Amex Amendment No. 1, and Phlx Amendment No. 1, all comprising the same substantive changes to their respective proposals, prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, the amendments clarify the initial market price requirements,²⁷ and the maintenance trading volume requirements²⁸ for shares of a Restructure Security issued pursuant to a public offering or rights distribution. Because the amendments accurately reflect the intent of the rule as originally proposed, and merely provide clarifying language, the Commission does not believe that the amendments raise any new or unique regulatory issues. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the foregoing amendments to CBOE's, Amex's, and Phlx's proposed rule changes on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning the PSE and NYSE proposals; CBOE Amendment Nos. 1 and 2; Amex Amendment No. 1; and Phlx Amendment No. 1. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal offices of the Exchanges. All submissions should refer to SR-CBOE-95-58; SR-Amex-95-47; SR-Phlx-95-90; SR-PSE-96-05; and SR-NYSE-96-03 and should be submitted by April 19, 1996.

V. Conclusion

Based on the above findings, the Commission believes the proposals are consistent with Section 6(b)(5) of the Act by facilitating transactions in securities while at the same time ensuring continued protection of investors. The new accelerated listing procedures only apply where a public offering or rights distribution is solely related to a restructuring of the Original Security, and the Original Security is already subject to options trading. This fact, along with the other strict conditions of the rule should help to identify for accelerated options eligibility only those Restructure Securities that will have adequate depth and liquidity to support options trading. At the same time it will provide investors with a better opportunity to hedge their positions in both the Original and the Restructure Security.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule changes (SR-CBOE-95-58; SR-Amex-95-47; Phlx-95-90; SR-PSE-96-05; and SR-NYSE-96-03), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:³⁰

Jonathan G. Katz,

Secretary.

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[Release No. 34-37014; File No. SR-NASD-96-05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Mutual Fund Quotation Service

March 22, 1996.

On February 5, 1996, the National Association of Securities Dealers, Inc. ("SEC" or "Commission") the proposed rule change pursuant to Section 19(b)(1)

²⁷ See *supra* note 19 and accompanying text.

²⁸ See *supra* note 20 and accompanying text.

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30-3(a)(12).

of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The proposed rule change revises the fee structure for the Mutual Fund Quotation Service ("MFQS" or "Service") and updates the name of the Service in the NASD Rules. Notice of the proposed rule change, together with the substance of the proposal, was issued by Commission release (Securities Exchange Act Release No. 36840, February 13, 1996) and by publication in the Federal Register (61 FR 6674, February 21, 1996). No comment letters were received. The Commission is approving the proposed rule change.

I. Background

The purpose of the proposed rule change is to revise the fee structure for the Service to account for significant enhancements and to reflect more accurately the value of the Service in today's market. The Service facilitates the public dissemination of daily price information for mutual funds and money market funds through the broadcast media and the newspapers. After the market close each day, mutual fund companies or their agents calculate the net asset value ("NAV"), and in some cases the dividend, capital gain, and other pertinent information for each fund. This information is submitted to the NASD by computer, which in turn disseminates it out to the media in a static batch transmission at approximately 5:40 p.m. Depending on the size and number of shareholders, funds may qualify for inclusion in either the News Media List or the Supplemental List.

II. The terms of Substance of the Proposed Rule Change

The proposed rule change amends Part VIII and Part XIV of Schedule D to the NASD B-Laws.³ Under the proposed rule change, new mutual funds will be assessed a one-time application processing fee of \$250 per fund. In addition, the fee to include a fund in the News Media List will increase from \$150 to \$275 per year. The fee to include a fund in the Supplemental List will increase from \$100 to \$200 per year.

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4.

³ Pursuant to a new rule numbering system for the NASD Manual anticipated to be effective no later than May 1, 1996, the rules that are the subject of this proposed rule change will become Rule 7090 (regarding fee structure), and Rule 6800 (regarding description of the Service). See Exchange Act Release No. 36698 (January 11, 1996), 61 FR 1419 (January 19, 1996) (order approving new rule numbering system).

III. Discussion

The Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act, which requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issues and other persons using any facility or system which the association operates or controls. The current fees have remained unchanged over a ten year period since inception of the Service, although the number of funds and shareholder accounts have increased more than three-fold. In addition, the one-time application fee for new funds is intended to defray the costs incurred in processing applications.

The fee increases are necessary to provide benefits to mutual funds, their agents, and the media. Several enhancements to the Service, including the establishment of a system of rolling dissemination of prices, will improve the distribution to the media of price information in a timely fashion. Rolling dissemination of prices will allow mutual funds and their agents to enter real-time updates throughout the day which will decrease rushed end-of-day transmissions of price information. The media will have more time to prepare its daily fund tables for inclusion in newspapers because the media will be receiving fund NAVs when they are available. Furthermore, the public that has increased its reliance on daily price information will benefit from real-time updates of price information which reduce the risk that the media will not receive any price information for publication. If a transmission problem occurs between 4:00 p.m. and 5:40 p.m., the media already will have received some fund information for publication, instead of relying on a single batch transmission at 5:40 p.m., as in the case today.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-96-05 be, and hereby is, approved.

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

Jonathan G. Katz,

Secretary.

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[Release No. 34-37015; File No. SR-NYSE-96-02]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to Voting of Proxies by Member Firms for Holders of Auction Rate Preferred Securities

March 22, 1996.

I. Introduction

On February 1, 1996, the New York Stock Exchange, Inc. ("NYSE" 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 that would allow the Exchange's member firms, under certain conditions, to vote the shares of auction rate preferred securities³ that they hold on behalf of their customers, notwithstanding the failure of the beneficial holders to provide instructions regarding the voting of such shares.

The proposed rule change was published for comment in Securities Exchange Act Release No. 36813 (February 6, 1996), 61 FR 5592 (February 13, 1996). One comment letter was received on the proposal.⁴ The NYSE filed Amendment No. 1 with the Commission on March 18, 1996.⁵ This order approves the proposal, including Amendment No. 1 on an accelerated basis.

II. Description

Auction rate preferred securities are preferred securities with dividend rates that are established periodically by auction or remarketing at specified reset periods. At the auction date, which typically runs every seven days but in some instances can be one to five years, the investors receive their entire investment along with accrued dividends, and may, if they so chose, participate in the repurchase of shares at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposed rule change defines an auction rate preferred security as a preferred security pursuant to which the dividend rate is established periodically by auction or remarketing at specified reset periods.

⁴ See Letter from Dorothy M. Donohue, Assistant Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated March 5, 1996.

⁵ Amendment No. 1 made clarifying changes to the text of the rule proposal. See Letter dated March 13, 1996, from James E. Buck, Senior Vice President and Secretary, NYSE, to Glen Barrentine, Team Leader, SEC.