D. Market Impact

The Commission believes that the listing and trading of options on the Indexes, including full-value and reduced-value Index LEAPS, on the Amex will not adversely impact the underlying securities markets.[36] First, as described above, due to the ''equal dollar-weighting'' methodology, no one stock or group of stocks dominates the Indexes. Second, because at each quarterly review and each rebalancing of the Indexes, at least 90% of an Index's numerical value and at least 80% of the total number of component securities must be accounted for by stocks that are eligible for standardized options trading, the component stocks generally will be actively-traded, highly-capitalized stocks. Third, the currently applicable 12,000 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the options on the Indexes will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring options on the Indexes (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is reasonable and 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 stocks underlying options on the Index.[37]

The Commission finds good cause for approving Amendment No. 2 to the proposal prior to the thirtieth day after the date of publication of the notice of filing thereof in the Federal Register. Specifically, Amendment No. 2 merely clarifies that for each of the Indexes, both eligibility standards and maintenance criteria require that upon annual rebalancing, at least 90% of each Index's numerical value and 80% of the total number of component securities must meet the then current criteria for standardized options trading set forth in either Rule 915 for component securities not currently the subject of standardized options trading or Rule 916 components which are currently the subject of standardized options trading. Moreover, Amendment No. 2 provides that Morgan Stanley will select and rank any stocks to be included in each Replacement List based on a number of criteria, including conformity to the same eligibility standards and maintenance criteria set forth in Rules 915 and 916. The Commission believes that clarifying the applicable eligibility standards and maintenance criteria for the Indexes' component securities is consistent with maintaining a fair and orderly market and reduces the likelihood of investor confusion.

Based on the above, the Commission finds good cause for approving Amendment No. 2 to the proposed rule change on an accelerated basis and believes that the proposal, as amended, is consistent with Sections 6(b)(5) and 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons making written submissions 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 in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–95–53 and should be submitted by April 19, 1996.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[38] that the proposed rule change (SR–Amex–95–53), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

[FR Doc. 96–7705 Filed 3–28–96; 8:45 am]

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[36] In addition, the Amex and the OPRA have represented that the Amex and the OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of options on the Indexes. *See* Letter from Charles Faurot, Managing Director, Market Data Services, Amex, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated January 22, 1996; letter from Edward Cook, Jr., Managing Director, Information Technology, Amex, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated February 8, 1996; and letter from Joe Corrigan, Executive Director, OPRA, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated January 22, 1996.

[37] Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[38] 15 U.S.C. § 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

[Release No. 34–37011; File Nos. SR–CBOE–95–58; SR–Amex–95–47; Phlx–95–90; SR–PSE–96–05; SR–NYSE–96–03]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Related Amendments by the Chicago Board Options Exchange, Inc., the American Stock Exchange, Inc. and the Philadelphia Stock Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the Pacific Stock Exchange, Inc., and the New York Stock Exchange, Inc., Relating to Listing Standards for Options on Securities Issued in a Reorganization Transaction Pursuant to a Public Offering or a Rights Distribution

March 22, 1996.

I. Introduction

On October 19, November 29, December 19, 1995, February 16, and March 1, 1996 the Chicago Board Options Exchange, Inc. (''CBOE''), the American Stock Exchange, Inc. (''Amex''), the Philadelphia Stock Exchange, Inc. (''Phlx''), the Pacific Stock Exchange, Inc. (''PSE'') and the New York Stock Exchange, Inc. (''NYSE'') (collectively the ''Exchanges''), respectively, 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] proposed rule changes to adopt listing standards for options on securities issued in a reorganization transaction pursuant to a public offering or a rights distribution.

Notices of the CBOE, Amex, and Phlx proposals were published for comment in the Federal Register on December 6, 1995, December 11, 1995, and December 29, 1995, respectively.[3] No comments were received on the proposals. The CBOE submitted to the Commission Amendment Nos. 1 and 2 to its proposal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 36528 (November 29, 1995), 60 FR 62523 (File No. SR–CBOE–95–58); 36550 (December 4, 1995), 60 FR 63550 (File No. SR–Amex–95–47); and 36625 (December 21, 1995), 60 FR 67378 (File No. SR–Phlx–95–90).

on January 30, and February 5, 1996, respectively.[4] The Phlx and Amex submitted to the Commission Amendment No. 1 to their proposals on February 21, and March 21, 1996, respectively.[5] This order approves the proposed rule changes, as amended, by the CBOE, Amex, and Phlx, and the proposed rule changes by the NYSE, and PSE, on an accelerated basis.

II. Background

The Exchanges currently maintain uniform standards regarding the approval for listing of underlying securities for options trading.[6] Specifically, to be the subject of options trading, the underlying security must meet the following guidelines: (1) Trading volume in all markets of at least 2.4 million shares in the preceding twelve months (''Volume Test''); (2) market price per share of at least $7.50 for the majority of business days during the three calendar month period preceding the date of selection (''Price Test''); (3) a minimum public ownership of 7 million shares (''Public Ownership Requirement'');[7] and (4) a minimum of 2,000 holders (''Holder Requirement'').[8] An exchange must determine that a security satisfies the above requirements, as of the date it is selected for options trading (''selection date''), which is the date the exchange files for certification of the listing of the option with The Options Clearing Corporation (''OCC''). Depending upon the interest and response from other options exchanges, the exchange may generally begin options trading from three to five business days after the selection date.

The Exchanges have adopted maintenance criteria for withdrawal of approval of an underlying security subject to options trading.[9] A security previously approved for options transactions shall be deemed not to meet the guidelines for continued listing if (1) trading volume in all markets is less than 1.8 million shares in the preceding twelve months (''Maintenance Volume Test''); (2) market price per share closes below $5.00 on a majority of business days during the preceding six calendar months (''Maintenance Price Test'');[10] (3) public ownership amounts to fewer than 6.3 million shares (''Maintenance Public Ownership Requirement''); or (4) there are fewer than 1,600 holders (''Maintenance Holders Requirement'').[11]

Both the initial and maintenance listing criteria are intended to ensure, among other things, that options are only traded on stocks with adequate depth and liquidity so that the options and their underlying components are not readily susceptible to manipulation.

The five options exchanges recently amended their rules to facilitate the earlier listing of options on securities issued in certain corporate restructuring transactions.[12] The amended rules apply to securities (''Restructure Security'') issued by a public company to existing shareholders, with existing publicly traded shares subject to options trading, in connection with certain ''restructuring transactions.'' [13]

The amended rules facilitates the earlier listing of options on a Restructure Security by permitting an exchange to determine whether a Restructure Security satisfies the Volume Test and Price Test by reference to the trading volume and market price history of an outstanding equity security (''Original Security'') previously issued by the issuer of the Restructure Security, or affiliate thereof.

In addition, the amended rules provide specific criteria for evaluating the distribution of shares of a Restructure Security for purposes of meeting the Public Ownership and Holder Requirements. To the extent that the initial options listing requirements are satisfied based upon these ''lookback'' provisions to the Original Security and the other provisions of the proposal, then an exchange will permit options trading to begin on the ex-date for the restructuring transaction.[14]

In order to utilize the amended rules, the Restructure Security must first satisfy one of four alternate conditions. The first three alternate conditions are intended to ensure that the trading volume and market price history of the Original Security represent a reasonable surrogate for determining the likely future trading volume and price data of the Restructure Security. Under these conditions either, (a) the aggregate market value of the Restructure Security, (b) the aggregate book value of the assets attributed to the business represented by the Restructure Security (minimum $50 million) or (c) the revenues attributed to the business represented by the Restructure Security (minimum $50 million) must exceed one of two stated percentages of the same measure for the Original Security.[15] The threshold percentages

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[4] The CBOE submitted Amendment Nos. 1 and 2 to clarify the initial market price requirements, and the maintenance trading volume requirements for shares of a Restructure Security issued pursuant to a public offering or rights distribution, as described more fully herein. *See* Letters from Michael Meyer, Attorney, Schiff Hardin & Waite, to Sharon Lawson, Senior Special Counsel, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission, dated January 30, 1996 (''CBOE Amendment No. 1''); and to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated February 5, 1996 (''CBOE Amendment No. 2'').

[5] The Phlx and Amex submitted identical amendments to reflect the changes set forth in CBOE's Amendment Nos. 1 and 2. As indicated above, these amendments clarify the initial market price requirements, and the maintenance trading volume requirements for shares of a Restructure Security issued pursuant to a public offering or rights distribution, as described more fully herein. *See* Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, Branch Chief, OMS, Market Regulation, Commission, dated February 21, 1996 (''Phlx Amendment No. 1''), and Letter from Howard A. Baker, Senior Vice President, Derivative Securities, Amex, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated March 21, 1996 (''Amex Amendment No. 1'').

[6] *See* Amex rule 915; CBOE Rule 5.3; PSE Rule 3.6; Phlx Rule 1009; and NYSE Rule 715.

[7] Shares that are owned by persons required to report their stock holdings under Section 16(a) of the Act (*i.e.*, directors, officers, and 10% beneficial owners) are excluded from this calculation.

[8] In addition to satisfying price, volume, public ownership, and holder requirements, for a Restructure Security to meet initial listing requirements, it must also comply with all requirements set forth by the Exchanges in their options eligibility rules. For example, the security must be registered, and listed on a national securities exchange, or traded through the facilities of a national securities association and reported as a ''national market system'' (''NMS'') security as set forth in Rule 11Aa3–1 under the Act, and the issuer must be in compliance with any applicable requirements of the Act.

[9] *See* Amex Rule 916; CBOE Rule 5.4; PSE Rule 3.7; Phlx Rule 1010; and NYSE Rule 716.

[10] Additional criteria permits the underlying security under certain circumstances to trade as low as $3.00 for a temporary period of time. *See* Id.

[11] In addition to satisfying the maintenance criteria for market price and trading volume, for a Restructure Security to meet maintenance requirements for an underlying security subject to options trading, it must also comply with all other requirements set forth by the Exchanges in their options eligibility rules.

[12] *See* Securities Exchange Act Release No. 36020 (July 24, 1995), 60 FR 39029 (July 31, 1995) (order approving SR–CBOE–95–11; SR–Amex–95–07; SR–Phlx–95–12; and SR–PSE–95–04); *See also* Securities Exchange Act Release No. 36029 (July 27, 1995), 60 FR 40637 (August 9, 1995) (order approving SR–NYSE–95–07) (''Restructuring Transactions Approval Orders'').

[13] A ''restructuring transaction'' is defined as a spin-off, reorganization, recapitalization, restructuring or similar corporate transaction.

[14] Option contracts may not be initially listed for trading in respect of a Restructure Security, whose shares are issued by the Original Security to its existing shareholders, until the ex-date. The ex-date occurs at such time when shares of the Restructure Security become issued and outstanding and are the subject of trading that are not on a ''when issued'' basis or in any other way contingent on the issuance or distribution of the shares.

[15] Aggregate market values will be based on share prices that are either (a) all closing prices in the primary market on the last business day preceding the selection date or (b) all opening prices in the primary market on the selection date. The aggregate market value of the Restructure Security may be determined from ''when issued'' prices, if available.

Asset values and revenues will be derived from the later of (a) the most recent annual financial statements or (b) the most recent interim financial statements of the respective issuers covering a

will be 25% if the applicable measure determined with respect of the Original Security represents an interest in the combined enterprise prior to the restructuring transaction, and 33⅓% if the applicable measure determined with respect of the Original Security represents an interest in the remainder of the enterprise after the restructuring transaction (''Percentage Tests''). The fourth alternate condition is that the aggregate market value represented by the Restructure Security be at least $500 million (''Aggreate Market Value Test''). This condition is based on the Exchanges' view that even if a Restructure Security does not meet the comparative tests outlined above, a Restructure Security with an aggregate market value of $500 million, by virtue of its absolute size, represents a substantial portion of the Original Security, and thus should qualify for the ''lookback'' provision.

If any one of the four conditions set forth above is satisfied, a Restructure Security will qualify for the ''lookback'' provision. Under the ''lookback'' provision, a Restructure Security may be eligible for options trading immediately upon its issuance provided the following requirements are satisifed. First, the Restructure Security must satisfy the Volume and Price Tests. An exchange may be permitted to determine whether a Restructure Security satisfies the Volume and Price Tests by reference to the trading volume and market price history of the Original Security. The trading volume and market price history of the Original Security that occurs *prior to the restructuring ex-date* can be used for these calculations (emphasis added). Volume and price data may be derived from ''when issued'' trading in the Restructure Security. However, once an exchange uses ''when issued'' volume or prices for the Restructure Security to satisfy the relevant guidelines, it may not use the Original Security for that purpose on any subsequent trading day. In addition, both the trading volume and market price history of the Original Security must be used, if either is so used.

Additionally, an exchange must determine whether a Restructure Security will satisfy the Public Ownership and Holder Requirements. This determination will either be based on facts and circumstances that will exist on the intended date for listing the option, or based on assumptions that are permitted under the proposal. Because the shares of the Restructure Security are to be issued or distributed to the shareholders of the issuer of the Original Security, these requirements may be satisfied based upon the exchange's knowledge of the existing number of outstanding shares and holders of the Original Security.

Moreover if a Restructure Security is to be listed on an exchange or in an automatic quotation system that subjects it to an initial listing requirement of no less than 2,000 holders, then the options exchange may assume that the Holder Requirement will be satisfied. Similarly, if a Restructure Security is to be listed on an exchange or in an automatic quotation system subject to an initial listing requirement of no less than public ownership of 7 million shares, then the options exchange may assume that Public Ownership Requirement will be satisfied. Additionally, if an exchange determines that at least 40 million shares of a Restructure Security will be issued and outstanding in a restructuring transaction, then it may assume that the Restructure Security will satisfy both the Public Ownership, and Holder Requirements.

An exchange, however, shall not rely on the above assumptions if, after reasonable investigation, it determines that either the public ownership of shares or the holder requirement, in fact, will not be satisfied on the intended date for listing the option. Additionally, other exchanges will have the opportunity to challenge the certification by demonstrating, among other things, that the Restructure Security will not meet the initial listing criteria with respect to public ownership and holders.

Finally, the Exchanges adopted a similar ''lookback'' provision for the Maintenance Volume Test and the Maintenance Price Test. Specifically, for purposes of satisfying these requirements, the trading volume and market price history of the Original Security, as well as any ''when issued'' trading in the Restructure Security, can be used for such calculations, provided that they are only used for determining price and volume history for the period prior to commencement of trading in the Restructure Security.

III. Description of the Proposals

The purpose of the proposed rule changes is to amend the Exchanges' special listing standards [16] that apply to options on equity securities issued in certain restructuring transactions to include securities issued pursuant to a public offering or a rights distribution that is part of a restructuring transaction.

As recently approved by the Commission, the Exchanges' accelerated listing criteria for options on Restructure Securities does not extend to restructuring transactions involving the issuance of shares of a Restructure Security in a public offering or a rights distribution.[17]

The Exchanges note that when shares of a Restructure Security are issued in a public offering or pursuant to a rights distribution, it cannot automatically be assumed that the shareholder population of the Restructure Security and the Original Security will be the same. Instead, the shareholders of a Restructure Security issued in a public offering will be those persons who subscribed for and purchased the security in the offering, and the shareholders of a Restructure Security issued in a rights distribution will be those persons who received rights via such an offering, or purchased such rights and elected to exercise them. Even in the case of a distribution of nontransferable rights to shareholders of the Original Security, not all such shareholders may choose to exercise their rights. As a result, it cannot be assumed that the Restructure Security will necessarily satisfy listing criteria pertaining to minimum number of holders, minimum public ownership of shares, and trading volume simply because the Original Security satisfied these criteria.

The Exchanges believe, however, that it is appropriate and desirable to be able to list options overlying securities issued in reorganizations involving public offerings or rights distributions without significant delay, provided there are reasonable assurances that the Restructure Securities satisfy applicable options listing standards. That is, shareholders of an Original Security who utilize options to manage the risks of their stock positions may well find themselves to be shareholders of both the Original Security and the Restructure Security following a reorganization because they chose to purchase the Restructure Security in a public offering or to exercise rights in order to maintain the same investment

period of not less than three months. Such financial statements may be audited or unaudited and may be pro forma.

[16] *See* CBOE Rule 5.3, Interpretation and Policy .05; Amex Rule 915, Commentary .05; Phlx Rule 1010, Commentary .05; PSE Rule 3.6, Commentary .05; and NYSE Rule 715, Supplementary Material .50.

[17] As stated above, the special listing standards adopted by the Exchanges currently apply to a Restructure Security, whose shares are issued by a public company to its existing shareholders, with existing public traded shares subject to options trading on an exchange, in connection with certain restructuring transactions. *See* Restructuring Transactions Approved Orders, *supra* note 10.

position they had prior to the reorganization. Such holders may want to continue to use options to manage the risks of their combined stock position after the reorganization, but they can do so only if options on the Restructure Security are available. The Exchanges believe that it is important to avoid any undue delay in the introduction of options trading in such a Restructure Security in circumstances where there is sound reason to believe that the Restructure Security will in fact satisfy options listing standards.

Accordingly, the Exchanges have proposed certain special listing criteria to address the attendant concerns. As with the options listing standards for shares of a Restructure Security issue to shareholders of the Original Security in certain restructuring transactions, an exchange will be able to assume the satisfaction of the Public Ownership and Holder Requirements in public offerings and rights distributions, if the Restructure Security is listed on an exchange or an automatic quotation system subject to equivalent listing requirements or at least 40,000,000 shares of the Restructure Security are issued and outstanding. Moreover, after due diligence, an exchange must have no reason to believe that the Restructure Security does not satisfy these requirements.

Additionally, the closing prices of the Restructure Security on each of the five or more consecutive ''regular way'' trading days prior to the selection date must be at least $7.50 per share.[18] In addition to this requirement, the Price Test must also be separately met. Satisfaction of the Price Test may be based on the market price history of the Restructure Security from the ex-date for the restructuring transaction to the selection date, and the market price history of the Original Security prior to the ex-date for restructuring transaction.[19] In the event the Restructure Security has a closing price that is less than $7.50 on any of the trading days preceding its selection date, or an opening price that is less than $7.50 on its selection date, the Restructure Security itself will have to satisfy the Price Test. This would require the Restructure Security to close at or above $7.50 on a majority of trading days over a period of three months before it can be certified as eligible for options trading. In order to rely, in part, on the market price history of the Original Security to satisfy the Price Test, the Restructure Security must still meet the Percentage Tests or the Aggregate Market Value Test as outlined above in Section II. Finally, trading volume in the Restructure Security itself, without reliance on the Original Security, must be at least 2,400,000 shares during a period of twelve months or less up to the time the security is so selected.

For any Restructure Security issued in a public offering or a rights distribution that satisfies these requirements, the effect of the proposed rule changes will be to permit its certification for options trading to take place as early as on the sixth day after trading in the Restructure Security commences.

Finally, the Maintenance Volume Test approved in the Restructuring Transactions Approval Orders is proposed to be amended to provide that in the case of a Restructure Security issued in a public offering or pursuant to a rights offering and approved for options trading on an accelerated basis, the Maintenance Volume Test may not be satisfied on the basis of the trading volume history of the Original Security, but instead it must be satisfied solely on the basis of the trading volume history of the Restructure Security.[20]

IV. Commission Findings and Conclusions

The Commission finds that the proposed rule changes are 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)(5),[21] in 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 it is necessary for securities to meet certain minimum standards regarding both the quality of the issuer and the quality of the market for a particular security to become options eligible. These standards are imposed to ensure that those issuers upon whose securities options are to be traded are financially sound companies whose trading volume, market price, number of holders, and public ownership of shares are substantial enough to ensure adequate depth and liquidity to sustain options trading that is not readily susceptible to manipulation. The Commission also recognizes that under current equity options listing criteria, investors may be precluded for a significant period from employing an adequate hedging strategy involving options on any newly acquired Restructure Security acquired pursuant to a public offering or rights distribution in connection with a restructuring transaction.

Accordingly, to determine whether the earlier listing of options overlying a Restructure Security issued pursuant to a public offering or rights distribution is reasonable, the Commission must balance the benefits of providing adequate hedging strategies to shareholders of the Restructure Security, and the risks of approving certain securities for options trading before such securities can conclusively be determined to satisfy the options eligibility criteria.[22] The Commission believes that the proposed limited exception to established equity options listing procedures where a public offering or rights distribution is solely related to a restructuring of an Original Security, and the Original Security is already the subject of options trading, strikes such a reasonable balance.

As discussed in more detail below, the Commission believes that the conditions of the new rule will help to ensure that only those securities that are most likely to have adequate depth and liquidity will be eligible for options trading prior to the establishment of a recognized trading history. Additionally, by facilitating the earlier listing of options on a Restructure Security issued pursuant to a public offering or rights distribution, the Commission believes that investors should be able to better hedge the risk of their newly acquired stock position in the Restructure Security.[23]

Despite the benefits of the proposal, the Commission believes that the proposal should only apply to restructuring transactions that involve financially sound and sufficiently large companies. The Commission believes that the Exchanges have adequately addressed this concern by requiring the Restructure Security to either satisfy certain comparative tests (comparing the Restructure Security, or its related business with that of the Original Security, or its related business,[24] or

[18] This requires that the Restructure Security must have actually been issued and traded for at least 5 consecutive trading days before it can be selected for options trading.

[19] *See* CBOE Amendment No. 1, *supra* note 4; *see also* Amex Amendment No. 1, and Phlx Amendment No. 1, *supra* note 5.

[20] *See* CBOE Amendment No. 1, *supra* note 4; *see also* Amex Amendment No. 1, and Phlx Amendment No. 1, *supra* note 5.

[21] 15 U.S.C. 78f(b)(5).

[22] *See supra* Section II.

[23] Although the proposals do not specifically address it, the Commission understands that the application of the proposals is limited solely to those instances where options are listed on the Original Security.

[24] The Commission notes that the comparative asset values and revenues, when used to determine

meet a very high aggregate market value standard ($500 million).[25]

The Commission believes that if one of the comparative tests or the aggregate market value standard is satisfied, the Restructure Security should qualify for the ''lookback'' provision. Under the ''lookback'' provision, a Restructure Security will be able to satisfy the Price Test if the market price history of the Restructure Security, together with the market price history of the Original Security occurring prior to the ex-date, meet the initial listing requirements for market price of the Restructure Security. The Commission believes that the additional requirement under the Exchanges' proposed rules that the closing price of the Restructure Security on each of the five or more consecutive ''regular way'' trading days prior to the selection date must be at least $7.50 per share provides an exchange with a reasonable sample price history of the Restructure Security before selection is permitted.

The Commission also believes that it is appropriate for an exchange to count ''when issued'' trading in the Restructure Security when determining if the Restructure Security will satisfy the Price Test set forth in the initial options listing requirements. However, once an exchange begins to use ''when issued'' volume or price history for the Restructure Security to satisfy the Price Test, it may not use the Original Security for such purposes on any subsequent trading day. For example, if in order to satisfy the Price Test for a Restructure Security for which the ex-date is April 1, 1996, and the selection date for the Restructure Security is April 8, 1996, an exchange may elect to base its determination on the market price of the Original Security from October 9, 1995 through March 1, 1996, the market price is the when-issued market for the Restructure Security from March 7, 1996 through March 31, 1996, and the ''regular way'' trading market price of the Restructure Security from April 1 through April 8, 1996, in determining whether options covering the Restructure Security may be certified for options trading on the April 8, 1996 selection date. An exchange, however, would be permitted to use the price history of the Original Security throughout the period from October 9, 1995 through March 31, 1996, provided that it did not rely on any when-issued market price history during that period.

The Commission notes that an exchange will not use trading history relating to the Original Security after the ex-date to meet the initial options listing requirements for the option contracts overlying the Restructure Security. Additionally, the condition that option contracts overlying a Restructure Security will not be initially listed for trading until such time as shares of the Restructure Security are issued and outstanding and are the subject of ''regular way'' trading for at least 5 trading days will serve to (1) ensure that options will only be traded on a Restructure Security when it is certain the security is actually issued and outstanding, and (2) provide an opportunity to better determine if the Holder and Public Ownership Requirements have been met.

The Commission notes that the Exchanges may not apply the ''lookback'' provision to satisfy the Volume Test for a Restructure Security issued pursuant to a public offering or rights distribution. The trading volume in the Restructure Security must be at least 2,400,000 shares during a period of twelve months or less up to the time the security is so selected. The Commission believes that this requirement will ensure that there is adequate liquidity in the Restructure Security, issued pursuant to a public offering or rights distribution, to qualify for options trading.

In addition to satisfying the Volume and Price Tests, a Restructure Security must also meet certain distribution requirements before an exchange can deem such security to be options eligible. Specifically, the Restructure Security must have 2,000 holders, and 7 million shares must be owned by persons not required to report their stock holdings under Section 16(a) of the Act to be options eligible. The proposal provides that an exchange may make certain limited assumptions to determine the Public Ownership and Holder Requirements. First, if a Restructure Security is to be listed on an exchange or in an automatic quotation system that has, and applies to the Restructure Security, an initial listing requirement that the issuer have no less than 2,000 holders, the Commission believes that it is reasonable for an exchange to assume that its comparable option listing requirement will be satisfied. Second, if a Restructure Security is to be listed on an exchange or in an automatic quotation system that has, and applies to the Restructure Security, an initial listing requirement of no less than public ownership of 7 million shares, the Commission believes that it is reasonable for an exchange to assume that its comparable option listing requirement will be satisfied.

The Commission notes that currently no exchange or automatic quotation system has a public ownership initial stock listing standard that is as stringent as those required under the options eligibility requirements. Moreover, a stock exchange may now be able to list stocks pursuant to alternate listing standards. For example, the Commission has recently approved alternate listing standards for companies listed on the New York Stock Exchange (''NYSE''), including, among other things, the distribution of shares.[26] Under these alternate listing standards, the NYSE is currently allowed to list certain companies with 500 shareholders that meet heightened requirements in other areas in lieu of its 2,200 total shareholder requirements. Therefore, the Exchanges should be careful to precisely determine which listing standards are being applied to the listing of the Restructure Security prior to making a determination as to whether the Restructure Security meets the corresponding options listing criteria.

Additionally, current options listing criteria for securities issued pursuant to restructuring transactions provide that if at least 40 million shares of a Restructure Security will be issued and outstanding in a restructuring transaction, an exchange may assume that the Restructure Security will satisfy both the public ownership of shares and holder requirements. The Commission believes this is appropriate because it appears unlikely that a Restructure Security with at least 40 million issued and outstanding shares, will have fewer than 2,000 holders or less than 7 million shares owned by persons not required to report their stock holdings under Section 16(a) of the Act.

The Commission believes that concerns associated with the ability of an exchange to make important listing decisions based on assumptions rather than confirmed facts are alleviated by the crucial provision that an exchange shall not rely on the above assumptions if, after a reasonable investigation, it determines that either the public ownership of shares or the holder requirement, in fact, will not be satisfied on the intended date for listing the option. At the very least, an exchange

whether the above-mentioned conditions are satisfied, shall be derived ''from the later of the most recent annual or most recently available comparable interim *(not less than three months)* financial statements.'' This provision means that the interim financial statements must cover a period of not less than three months.

[25] *See* Restructuring Transactions Approval Orders, *supra* note 12.

[26] *See* Paragraph 102.01 of the NYSE's Listed Company Manual. *See also* Securities Exchange Act Release No. 35571 (April 5, 1995), 60 FR 18649 (April 12, 1995) (order approving proposed rule change relating to domestic listing standards).

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 requirements [28] 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).