shares in the absence of the beneficial holder exercising such right.

Moreover, under the proposal a member firm's right to vote such shares would be limited to proposals that have received the vote of at least 30% of the outstanding shares of each class or series (where a series vote is required) of the auction rate preferred shares. This will ensure that the member firm's proportional vote mirrors the vote of a significant portion of the total outstanding auction rate preferred shares. In addition, the member firm would be prohibited from voting where 10% or more of the outstanding shares of the same class or series (where a series vote is required) voted against the proposal and, in the case of a proposal that requires both the common and the preferred holders to vote as a single class, where the proposal does not receive the separate approval of the common shareholders.[14] These provisions effectively limit the member firm's proportional vote to matters that are strongly supported by those auction rate preferred holders who do vote and, where necessary, approved by the common shareholders. Finally, to further ensure fairness, the member firm may only vote on matters that have been approved by a majority of an issuer's independent directors.

The Commission believes that these conditions protect the rights of the holders of auction rate preferred securities by sufficiently limiting the right of member firms to vote, on non-routine items, the shares of such securities that they hold on behalf of their customers. At the same time, the Exchange's proposal should meet its objective of assisting issuers in obtaining approval of matters that are overwhelmingly supported by auction rate preferred shareholders who do vote.

Moreover, the Commission believes that the amended language adopted by the Exchange with regard to subsections (iii) and (iv) of the proposed rule change is preferable to the alternative offered in the Comment Letter. The Exchange's approach, which applies the 30% and 10% thresholds to the same class or series (where a series vote is required) instead of to all of the outstanding preferred shares, offers greater protection to the voting interests of holders of each class or series, as applicable.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Amendment No. 1 made clarifying, technical changes to the text of the rule, and did not propose new substantive provisions to the proposed rule change. Accordingly, the Commission believes that consistent with Section 19(b)(2), good cause exists to accelerate approval of Amendment No. 1.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. 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 amendments, all written statements with respect to the proposed rules change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, other than those that may be withheld from the public in for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–96–02 and should be submitted by April 19, 1996.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NYSE–96–02), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

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[14] As to any proposal that requires the common and preferred holders to vote as a single class, the above provisions, if read in combination, could be understood as conditioning the member firm's right to vote on the requirement that less than 10% of the outstanding shares of such combined class not vote against the proposal. The Exchange has informed the Commission, however, that it would interpret the 10% threshold as applying only to the outstanding preferred shares such that a member would not be prohibited from voting if 10% or more of the outstanding shares of a combined class of common and preferred voted against the proposal so long as less than 10% of the preferred shares did not vote against the proposal. The Exchange has further represented that it intends to notify its members of this interpretation though an Interpretation Memo. Telephone conversation between John Longobardi, Managing Director, NYSE, and Glen Barrentine, SEC, dated March 21, 1996.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[Release No. 34–37016; International Series Release No. 956; File No. SR–NYSE–96–04]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to an Amendment of NYSE

March 22, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 11, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Commission is approving the proposal on an accelerated basis, in addition to 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 proposed rule change consists of an amendment to NYSE Rule 104 to facilitate trading in Investment Company Units (''Units''),[2] including CountryBaskets.[3]

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 specificed in Item IV below. The self-regualtory 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

The Exchange proposes to amend its Rule 104 to facilitate specialist market

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] NYSE Listed Company Manual Section 703.16 defines a Unit as a security that represents an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity.

[3] ''CountryBasket,'' ''CountryBaskets'' and ''CB'' are trademarks of Deutsche Bank Securities Corporation).

making in Units, including CountryBaskets. Trading in CountryBaskets is expected to begin on March 25, 1996.[4]

Currently, Rule 104 requires that specialists obtain the approval of an Exchange Floor Official when effecting a destabilizing transaction on a direct plus or direct minus tick. The Exchange proposes to amend Rule 104 by adding new Supplementary Material .10(7) to provide that the requirement to obtain Floor Official approval for transactions on a direct plus tick or a direct minus tick for a specialist's own account contained in Rule 104 Supplementary Material .10(5)(i)(A), (B), (C) and (6)(i)(A) will not apply to transactions that are effected for the purpose of bringing the price of a Unit into parity with the value of the portfolio on which it is based, or the net asset value of the Unit.

Direct destabilizing transactions that are leading, rather than following, the underlying component portfolio would continue to require Floor Official approval. Specialists would remain subject to all other requirements of Rule 104 with respect to their affirmative and negative obligations to maintain a fair and orderly market.

The Exchange believes that its proposal is consistent with the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The NYSE has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act because trading in CountryBaskets is expected to begin on March 25, 1996. The Exchange believes that approval of the proposal should enhance the ability of specialists to make markets in such securities.

(B) Self-Regulatory Organization's Statement on Burdeon 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.

[4] CountryBasket securities represent an interest in a registered investment company that will hold securities that are component stocks of nine different indices. The nine CountryBaskets are Australia, France, Germany, Hong Kong, Italy, Japan, South Africa, the United Kingdom and the United States.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited or received.

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)[5] that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts, and, in general, protect investors and the public interest.

The Commission believes that the Exchange's proposal to add Supplemental Material .10(7) to its Rule 104 to facilitate specialist market making in Units, including CountryBaskets, is consistent with the Act. The Exchange's proposal is limited to ''parity'' transactions on direct destabilizing ticks to bring Units, including CountryBaskets, into line with the value of their corresponding underlying component portfolio. Moreover, the only change being effected by the proposals is that such transactions would not require the Floor Official approval currently mandated by Rule 104. As discussed below, such transactions must still comply with all of the other requirements of NYSE Rule 104.

The Commission believes that it is appropriate to allow such transactions without Floor Official approval, given that the derivatives nature of Units in effect renders them equity securities that have a pricing and trading relationship linked to the portfolio upon which they are based. Hence, upon change in the underlying portfolio, a Units specialist may determine that it needs to engage in a ''parity'' transactions to bring Units into line with the value of the corresponding underlying portfolio. The requirement to secure Floor Official approval could delay the specialist from effecting such transactions, during which time the value of the portfolio could continue to move. The Commission believes, therefore, that it is reasonable for the Exchange to remove the need for Floor Official approval to address this situation. Direct destabilizing transactions that are leading, rather than following,the underlying portfolio would continue to require Floor Official approval.

The Commission notes that the Exchange's proposal does not relieve Units specialists from the general requirement of NYSE Rule 104 that they effect transactions that are reasonably necessary for them to maintain a fair and orderly market in Units. Units specialists also will remain subject to the specific obligations imp;imposed on them by rule 104. Thus, consistent wit the maintenance of a fair and orderly market, transactions for a specialists own account should be such that they maintain rice continuity with reasonable depth,and minimize the effects of temporary disparities between supply and demand.[6] Similarly, a specialist's quotation made for transactions on his own account should bear a proper relation to preceding transactions and anticipated succeeding transactions.[7] Finally, Unit specialist transactions will be subject to the Exchange's rules governing the auction market principles of priority. Parity, and precedence of orders.[8]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. As discussed above, the Exchange's proposal is narrowly circumscribed to address certain situations that may arise in connection with specialist market making in Units, specifically CountryBaskets. Moreover, accelerated approval will allow specialists to avail themselves of the proposed provision from the inception of trading, expected to be March 25, 1996. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

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

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] NYSE Rule 104, Supplementary material .10 (1)–(3).

[7] NYSE Rule 104, Supplementary Material .10(4).

[8] NYSE Rule 72.

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 principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NYSE–96–04 and should be submitted by April 19, 1996.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–96–04) is approved.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 96–7703 Filed 3–28–96; 8:45 am]

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[Release No. 34–37005; File No. SR–Phlx–95–69]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Bid Test Exemption

March 21, 1996.

I. Introduction

On January 2, 1996, 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 proposal to extend its market maker bid test exemption. The proposed rule change was published for comment in the Federal Register on February 7, 1996.[3] On March 20, 1996, the Phlx filed Amendment No. 1 to its proposal.[4] No comments were received on the proposed rule change. This order approves the proposal.

II. Description of the Proposal

The Phlx proposes to amend its Rule 1072, Reporting Requirements Applicable to Short Sales in NASD/NM Securities, which establishes specific criteria exempting Phlx specialists and Registered Option Traders (''ROTs'') from the National Association of Securities Dealers, Inc. (''NASD'') ''bid test'' applicable to Nasdaq National Market (''NM'') securities.[5] Specifically, the Phlx proposes to extend its market maker exemption to: (1) permit a ROT to facilitate an off-floor options or combination order hedged contemporaneously with a short sale in a designated NM security, with prior Floor Official approval and the filing of a written report; and (2) allow the exemption to apply to a company that is involved in a publicly announced merger or acquisition (''M&A'') with an NM security. The Exchange has represented that its proposed exemptions are similar to rule provisions of other options exchanges.[6]

In 1994, the NASD adopted a bid test rule applicable to NM securities traded through Nasdaq prohibiting short sales of NM securities at or below the current inside bid when that bid is below the previous inside bid.[7] An exemption from this rule exists for option market makers hedging positions with the underlying securites of that option; qualifying short sales are referred to as ''exempt hedge transactions.'' Pursuant to this market maker exemption, the Phlx adopted Rule 1072 establishing specific criteria for a short sale to qualify as an ''exempt hedge transaction'' in ''designated'' NM issues.[8] Generally, option specialists may designate as exempt short sales in NM securites underlying their specialist equity options, and index options if at least 10% of the value of the index is comprised of NM securites. A ROT only may designate as exempt short sales in NM securites underlying no more than 20 of the options or index options to which the ROT has been assigned.

Facilitating Orders

Proposed Phlx Rule 1072(c)(2)(ii)(A) would permit a ROT to facilitate an off-floor options order and contemporaneously hedge the resulting option position with a short sale in applicable NM securites as if such securities were designated securities pursuant to the Rule.[9] To ensure that the transaction qualifies for the proposed provision, a ROT must file a written report with the Market Surveillance Department of the Exchange, indicating Floor Official approval. Such ROT also must retain a copy of the report to demonstrate that the transaction was bid test exempt.

M&A Transactions

Proposed Phlx Rule 1072(c)(2)(ii)(B) would extend the bid test exemption to include a short sale in an M&A security effected by a qualified Exchange options market maker to hedge, and which in fact serves to hedge, an existing or prospective position in an Exchange-listed option overlying a designated NM security of another company that is a party to the M&A.[10] The M&A exemption only would be available to securities involved in an M&A that is publicly announced.

As applied to the Phlx specialist, the proposed exemption would apply to short sales of a company that is party to an M&A with a company whose NM security underlies a specialty stock option (or qualified index option). As applied to a Phlx ROT, the exemption would extend to a company that is party to an M&A with a company whose NM security underlies an option designated by such ROT.

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, the

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[9] 15 U.S.C.78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 36785 (January 29, 1996), 61 FR 4697.

[4] In Amendment No. 1, the Phlx clarifies that proposed Phlx Rule 1072(c)(ii)(2) applies only to option orders that do not have a stock component. Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated March 20, 1996 (''Amendment No. 1'').

[5] ''Bid test'' or ''short sale'' rule.

[6] Respecting facilitation orders, *see* Securities Exchange Act Release No. 35281 (January 26, 1995), 60 FR 6575 (Chicago Board Options Exchange (''CBOE'')); and respecting M&A securities, *see* Securities Exchange Act Release Nos. 35211 (January 10, 1995), 60 FR 3887 (American Stock Exchange (''Amex'')), CBOE, and Pacific Stock Exchange (''PSE'') as well as 36019 (July 24, 1995), 60 FR 39035 (New York Stock Exchange (''NYSE'')).

[7] Securities Exchange Act Release No. 34277 (June 6, 1994), 59 FR 34885 (granting temporary approval). NASD Rules of Fair Practice, Art. III, Section 48.

[8] Securities Exchange Act Release No. 34632 (September 2, 1994), 59 FR 46999. In general, an ''exempt hedge transaction'' is a short sale in an NM security that is effected to hedge, and in fact serves to hedge, an existing offsetting options position or an offsetting options position that was created in one or more transactions contemporaneous with the short sale. Phlx Rule 1072(c)(2)(i).

The other options exchanges adopted rules similar to Phlx Rule 1072. *See* CBOE Rule 15.10, NYSE Rule 759A, Amex Rule 957, and PSE Rule 4.19. Securities Exchange Act Release No. 34632.

[9] The exemption would apply to option-only orders. Thus, the exemption would not apply to combination orders that contain a stock component. Amendment No. 1, *supra* note 4.

[10] M&A securities are securities of a company that is a party or prospective party to a publicly announced merger or acquisition with an issuer of an NM security that underlies an Exchange listed option.