

permit floor brokers to effect short sales in the auction market based upon the last reported transaction at the time of the agreement to the auction market trade, and irrespective of auto ex trades that are reported while the transaction is being completed, as contemplated by Rule 1003. In a letter dated December 21, 2000, the Commission granted to the Exchange certain exemptive relief from Commission Rule 10a-1 regarding these Exchange rules for the duration of the pilot, subject to the conditions described in the letter.<sup>29</sup> Consequently, the Commission finds that in light of the relief granted from Rule 10a-1, Rule 10a-1 does not prohibit implementation of NYSE Direct+ as discussed in this order, during the pilot program. If the Exchange decides to continue the program, the Exchange would be required to submit a proposed rule change extending, or requesting permanent approval of, the pilot, and another request for relief from Commission Rule 10a-1.

#### *Accelerated Approval for Amendment No. 1*

The Commission finds good cause for accelerating approval of Amendments Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that these Amendments provide useful clarifications to the proposed rules. Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5) of the Act,<sup>30</sup> and section

19(b) of the Act<sup>31</sup> to accelerate approval of Amendments Nos. 1 and 2 to the proposed rule change.

#### **V. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning Amendments Nos. 1 and 2, including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0609. 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 Commissions 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR-NYSE-00-18 and should be submitted by January 25, 2001.

#### **VI. Conclusion**

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>32</sup> that the proposed rule change (SR-NYSE-00-18), as amended, is approved on a pilot basis until December 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>33</sup>

**Jonathan G. Katz,**

*Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-43771; File No. SR-NYSE-00-33]**

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Amending NYSE Rule 15A Relating to the Intermarket Trading System**

December 22, 2000.

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

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 18, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 30, 2000, the Exchange filed an amendment to the proposed rule change.<sup>3</sup> As amended, the proposal is effective upon filing with the Commission, pursuant to section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend NYSE Rule 15A with respect to the definition of "ITS/CAES Market Maker." Below is the text of the proposed rule change. Additions are italicized and deletions are in brackets. NYSE Rule 15A(a)(6)

"ITS/CAES Market Maker", as that term is used in the Rule, means a NASD member that is registered as a market maker with the NASD for the purposes of the Applications with respect to one or more specified *System securities* ["ITS/CAES securities" as more fully described in the ITS Plan].

#### **II. Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange 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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See November 30, 2000 letter from James E. Buck, Corporate Secretary, NYSE, to Joseph P. Morra, Special Counsel, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the NYSE asked the Commission to consider the proposal pursuant to Section 19(b)(3)(A) of Act and Rule 19b-4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A), 17 CFR 240.19b-4(f)(6). The Commission has agreed to accept the original proposal as satisfying the 5-day pre-filing requirement pursuant to Rule 19b-4(f)(6). 17 CFR 240.19b-4(f)(6).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6). For purposes of calculating the 60-day abrogation period, the Commission considers the period to begin as of the date the Exchange filed Amendment No. 1, November 30, 2000.

<sup>29</sup> See Exemption Letter. The exemption granted with respect to proposed rule 1001(a)(iv) is limited to situations where the specialist is required to take the contra side of an auto ex execution against the published quotation, even though the specialist's interest was not part of the published quotation, because: (1) The published quotation reflects interest that has received an execution, but the quotation has not been updated to reflect this fact; or (2) the published quotation reflects interest that had been cancelled, but the quotation has not been updated to reflect this fact. The no-action relief with respect to proposed Rule 1003 is subject to certain limitations. First, when an auto ex trade is reported between the time that the auction market short sale is agreed upon and when it is reported, and the auto ex trade report is at a price that would result in the auction market trade being reported as a minus or zero-minus tick, the auction market short sale must be presented to an NYSE floor official. In addition, the NYSE floor official must: (a) Find that the short sale was presented for reporting immediately after agreement to the trade; (b) find that the short sale was priced in compliance with Rule 10a-1 at the time that the floor brokers agreed to the trade; (c) find that the short sale price is not lower than the best bid displayed in the auction market at the time the transaction is reported; and (d) direct that the trade be reported as a "sold sale." Finally, the NYSE must keep records of all floor brokers' transactions relying upon this exemption, and present this information upon request to the Division.

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> 15 U.S.C. 78s(b).

<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> 17 CFR 200.30-3(a)(12).

Exchange 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**

According to the Exchange, the purpose of the proposed rule change is to amend the definition of "ITS/CAES Market Maker" to eliminate the current reference to "ITS/CAES securities." Since 1982, the National Association of Securities Dealers' participation in the ITS Plan had been limited to securities subject to SEC Rule 19c-3 ("ITS/CAES Securities").<sup>6</sup> On December 9, 1999, the Commission adopted amendments to the ITS Plan to expand the ITS/CAES linkage to all listed securities, thus rendering unnecessary the term "ITS/CAES securities."<sup>7</sup>

**2. Statutory Basis**

The Exchange believes that the proposed amendment to NYSE Rule 15A is consistent with section 6(b)(5) of the Act<sup>8</sup> as it is designed to promote just and equitable principles of trade. The Exchange also believes the amendment is consistent with section 11A(a)(1)(D) of the Act,<sup>9</sup> which calls for the linking of markets for qualified securities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*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**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or

such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR-NYSE-00-33 and should be submitted by January 25, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jonathan G. Katz,**

*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43773; File No. SR-Phlx-00-31]

**Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1 and No. 2 by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Trust Issued Receipts**

December 27, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 18, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On December 13, 2000, the Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On December 18, 2000, the Phlx filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change and Amendments No. 1 and No. 2 from interested persons and to approve the proposal and Amendments No. 1 and No. 2 on an accelerated basis.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to amend its rules to create listing criteria and additional trading halt criteria to allow the Exchange to list and trade trust issued receipts, and to trade Holding Company

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy J. Sanow Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 12, 2000 ("Amendment No. 1"). In Amendment No. 1, the Phlx corrected technical errors in the rule text and the language of the rule text. The Phlx also deleted proposed Phlx Rule 803(j)(4) because the 4:00 p.m. deadline until which trust issued receipts can trade is already addressed in current Phlx Rule 101, Supplementary Material .02. The Phlx determined to reserve Phlx Rule 803(j)(4) for future use.

<sup>4</sup> See Letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy J. Sanow Assistant Director, Division of Market Regulation, dated December 15, 2000 ("Amendment No. 2"). In Amendment No. 2, the Phlx renumbered proposed Phlx Rule 133, Supplementary Material .05 as proposed Phlx Rule 136(b). Phlx Rule 136 was created in a separate Phlx filing and relates to trading halts in certain exchange traded funds. See Securities Exchange Act Release No. 43717 (December 13, 2000) (Phlx-00-54). The Phlx also clarified certain changes to the rule text made in Amendment No. 1.

<sup>6</sup> 17 CFR 240.19c-3.

<sup>7</sup> See Securities Exchange Act Release No. 42212 (December 9, 1999), 64 FR 70297 (December 16, 1999).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78k-1(a)(1)(D).

<sup>10</sup> U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 200.30-3(a)(12).