arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASDAQ–2006–024 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASDAQ–2006–024. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2006–024 and should be submitted on or before August 29, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

[FR Doc. E6–12840 Filed 8–7–06; 8:45 am]

BILLING CODE 8010–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54255; File No. SR–NYSE–2005–03]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 To Amend Exchange Rule 325 (Capital Requirements for Member Organizations), Rule 326 (Growth Capital Requirement, Business Reduction Capital Requirement, Unsecured Loans and Advances), and Rule 431 (Margin Requirement)

July 31, 2006.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 5, 2005, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[4] The NYSE filed Amendment No. 1 to the proposed rule change on February 13, 2006.[5] The NYSE filed Amendment No. 2 to the proposed rule change on March 17, 2006.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

[4] Pursuant to discussions with the Commission staff, the Exchange clarified the application of proposed amendments to NYSE Rules 325, 326 and 431 to reflect the Exchange's March 7, 2006 merger with Archipelago Holdings, Inc. (''Archipelago''), adjustments to capital levels in Rule 326 and other general editorial changes. Telephone conversations between William Jannace, Director, Exchange, William Wollman, Vice President, Exchange and E. David Hwa, Special Counsel, Division of Market Regulation, Commission, on May 11, 2006, June 8, 2006, July 19, 2006 and email dated July 19, 2006.

[5] In Amendment No. 1, the Exchange clarified the application of proposed amendments to NYSE Rule 431(e)(9) solely to OTC derivatives transactions and expanded upon elements of the written risk analysis provided by the proposed rule for member organizations utilizing the alternative method of computing net capital.

[6] In Amendment No. 2, the Exchange clarified the application of proposed amendments to NYSE Rule 326 to make explicit the ability of the Exchange to restrict the growth or business of a member organization, respectively, when its tentative net capital declines below the early warning notification amount required by the Exchange Act Rule 15c3–1(a)(7)(ii).

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

The Exchange is proposing to amend Rule 325, Rule 326, and Rule 431 to reflect recent SEC rule amendments under the Exchange Act, including amendments to Exchange Act Rule 15c3–1 that established an alternative method of computing net capital for broker-dealers.

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 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 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

Background

Exchange Act Rule 15c3–1 (the ''net capital rule'') contains basic financial responsibility standards for broker-dealers. The rule is intended to protect customers and other market participants from broker-dealer failures, and to enable those firms that fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal proceeding or financial assistance from the Securities Investor Protection Corporation. To help insure that broker-dealers maintain sufficient liquid assets to satisfy promptly the claims of customers and cover potential market and credit risks, the net capital rule requires broker-dealers to maintain different minimum levels of capital based upon the nature of their business and whether they handle customer funds or securities.

On August 20, 2004, the SEC adopted rule amendments under the Exchange Act, including amendments to Exchange Act Rule 15c3–1, that establish a voluntary, alternative method of computing net capital for certain large broker-dealers that are part of consolidated supervised groups referred to as consolidated supervised entities (''CSEs''). Under the SEC amendments, a broker-dealer may use this

''alternative/CSE'' method only if its ultimate holding company agrees to compute group-wide allowable capital and allowances for market, credit, and operational risk in accordance with the standards adopted by the Basel Committee on Banking Supervision, and consents to group-wide SEC supervision. The alternative method of computing net capital permits a broker-dealer to use models, such as ''value-at-risk'' (''VAR'') models and scenario analysis,[7] that are already part of its internal risk management control system to calculate the market risk and derivatives-related credit risk components of its net capital requirement. The deduction for market risk calculated using internal models replaces the traditional ''haircut'' approach to calculating net capital.[8]

When the Membership allow their net capital to decline below certain levels, they risk non-compliance with the net capital and financial responsibility requirements of Exchange Act Rule 15c3–1. NYSE Rules 325 and 326 are designed to alert the Exchange before such problems occur, and to enable the Exchange to prevent Membership non-compliance by restricting the business activities of any member organization whose net capital falls below certain defined levels.

Proposed Amendment to NYSE Rule 325

NYSE Rule 325, the Exchange's primary net capital rule, requires the Membership to comply with Exchange Act Rule 15c3–1 and imposes additional prophylactic requirements to ensure such compliance. Rule 325(b) requires a member organization to notify the Exchange if its net capital falls below certain percentages. The proposed amendment adds Rule 325(b)(3), which would require a member organization to provide concurrently to the Exchange a copy of any report or notification made to the SEC pursuant to Exchange Act Rule 17a–11 [9] or Commodities Exchange Act (''CEA'') [10] Regulation 1.12.[11]

This new requirement is necessary to help ensure that the Exchange continues to receive timely notification of potential violations of Exchange Act Rule 15c3–1, including the rule's new CSE provisions. For example, as noted above, Exchange Act Rule 15c3–1, in conjunction with Exchange Act Rule 17a–11, now requires a broker-dealer that elects to use the alternative method of computing net capital to report to the SEC whenever its tentative net capital declines below $5 billion. Proposed Rule 325(b)(3) would require a member organization to provide the Exchange with copies of every such report.

Language in Rule 325(b) regarding notification to the Exchange relating to CEA minimum capital requirements for members or member organizations acting as futures commission merchants was rendered obsolete by amendments to CEA Regulation 1.17 [12] on September 30, 2004 [13] and, therefore, has been removed from the amended Rule 325(b). The proposed new provisions of Rule 325(b)(3), however, would require a member organization to provide the Exchange with copies of any reports or notifications it provides to the Commodity Futures Trading Commission (''CFTC'') under CEA Regulation 1.12. Therefore, because CEA Regulation 1.12 requires notification by any futures commission merchant that experiences a decline in net capital below the CEA's early warning levels, the Exchange will continue to receive notification if a member organization acting as futures commission merchant is in danger of violating CEA minimum capital requirements.

The Exchange's merger with Archipelago rendered the Exchange's constitution obsolete so paragraphs (5) and (6) of Rule 325(e) and all references to the constitution were removed.

Other grammatical changes have been made throughout Rule 325 for purposes of clarity and stylistic consistency.

Proposed Amendment to NYSE Rule 326

NYSE Rule 326, which enables the Exchange to restrict a member organization's business activities if its net capital falls below certain defined levels, uses a two-step approach to preventing Membership non-compliance with Exchange Act Rule 15c3–1. First, Rule 326(a) allows the Exchange to prohibit a member organization from expanding its business if its net capital falls below specified levels. Second, if a member organization's net capital falls below lower, specified levels, Rule 326(b) allows the Exchange to compel it to reduce its existing business. To enable the Exchange to regulate its Membership proactively (that is, to act if a member or member organization is in danger of violating Exchange Act Rule 15c3–1, rather than waiting until Exchange Act Rule 15c3–1 has been violated), the levels specified in NYSE Rule 326 are higher than those contained in Exchange Act Rule 15c3–1.

The proposed amendments would add Rule 326(a)(4) to provide minimum tentative net capital [14] and net capital levels for the Exchange to use when prohibiting, under Rule 326(a), the expansion of business by a member organization using the alternative method computing net capital under the CSE rules. The levels proposed in Rule 326(a)(1)(d) (50 percent of the tentative net capital level that triggers SEC notification or the net capital level is less than $1.25 billion) will not unduly restrict a member organization's business, but will allow the Exchange, after evaluating a member organization's financial condition, to use the disincentive of restricted business expansion to encourage a member organization whose net capital has fallen to levels that risk violation of Exchange Act Rule 15c3–1 to take necessary corrective action.

Language in Rule 326(a) regarding limiting a member organization's expansion of business due to CEA minimum capital requirements for a member organization acting as futures commission merchant was rendered obsolete by the aforementioned amendments to CEA Regulation 1.17, and, therefore, has been removed from the amended Rule 326(a).

The proposed amendment would add Rule 326(b)(1)(d) to provide minimum tentative net capital and net capital levels for the Exchange to use in requiring a member organization that uses the alternative method of computing net capital to reduce its business pursuant to Rule 326(b). The levels proposed in Rule 326(b)(1)(d) (40 percent of the tentative net capital level that triggers SEC notification or net capital less than $1 billion) would not unduly restrict a member organization's business, but would allow the Exchange, after evaluating a member organization's financial condition, to use the disincentive of mandatory business reduction to encourage necessary corrective action by a member organization whose net capital has fallen to levels that risk violation of Exchange Act Rule 15c3–1.

[7] Value-at risk models assess market risk based on the probability distribution for a portfolio's market value. Scenario analysis is a method of assessing market risk by testing various possible scenarios.

[8] The ''haircut'' approach to computing net capital involves reducing the value of firms'' proprietary securities by pre-determined percentages to allow for potential reductions in market value.

[9] 17 CFR 240.17a–11.

[10] 7 U.S.C. 1 *et seq.*

[11] 17 CFR 1.12.

[12] 17 CFR 1.17.

[13] The CEA amendments eliminated capital requirement calculations based on the concept of ''segregated funds.''

[14] The term ''tentative net capital,'' as it pertains to the new regulations regarding broker-dealers using the ''alternative/CSE'' method, is defined in Exchange Act Rule 15c3–1(c)(15), part of the SEC's new CSE regulations.

Language in Rule 326(b) regarding the reduction of a member organization's business due to CEA minimum capital requirements for a member organization acting as futures commission merchant was rendered obsolete by the aforementioned amendments to CEA Regulation 1.17, and, therefore, has been removed from the amended Rule 326(b). The proposed new provisions of Rule 326(b)(1)(e), however, would require a member organization to reduce its business if its net capital falls below 110 percent of the minimum capital requirements of CEA Regulation 1.17 (the same level that triggers notification to the CFTC under CEA Regulation 1.12). Therefore, the Exchange will retain the ability to compel a member organization to reduce its business if its net capital falls to levels that may violate CEA minimum capital requirements.

Other grammatical changes have been made throughout Rule 326 for purposes of accuracy, clarity, and stylistic consistency.

Proposed Amendment to NYSE Rule 431

Section 7(a) [15] of the Exchange Act empowers the Board of Governors of the Federal Reserve System to prescribe the rules and regulations regarding the credit that may be extended by broker-dealers on securities (Regulation T [16]). NYSE Rule 431 prescribes specific margin requirements that must be maintained in all of a member organization's customer accounts, based on the type of securities products held in such accounts.

Exchange Act Rule 15c3–1e(c),[17] one of the recent SEC amendments related to the alternative method of computing net capital for CSE broker-dealers, prescribes deductions to net capital for credit risk on transactions in certain derivative instruments for broker-dealers using the alternative method (for example, VAR models), provided the broker-dealers have in place comprehensive internal risk management procedures that address market, credit, liquidity, legal, and operational risk at the firm.

The proposed amendment to Rule 431 would add Rule 431(e)(9). This new paragraph would exempt a member organization using the alternative method of computing net capital from Rule 431 for certain exposures arising from transactions in over-the-counter (''OTC'') derivative instruments [18] for which the member organization may compute a deduction to net capital for credit risk using the methods contained in Rule 15c3–1e(c).

A member organization that applies Rule 431(e)(9) must maintain a written risk analysis methodology for assessing the amount of credit that may be extended with respect to OTC derivatives transactions and the methodology must include at least those procedures and guidelines enumerated in paragraph (e)(9). The procedures and guidelines relate to reviewing customer account documentation and financial information; establishing credit limits for customers; monitoring the member organization's credit risk exposure to its customers; management reporting on credit extension exposure; managing the impact of credit extension on the member organization's overall risk exposure; the appropriate management response to violations of credit extension limits; stress testing customer accounts individually and in the aggregate; and determining whether to collect margin from a particular customer. The member organization must establish a method for period review of these procedures by an independent unit of the organization, such as internal audit or risk management. Management also must review periodically the member organization's credit extension activities for consistency with the guidelines.

2. Statutory Basis

The proposed amendments to NYSE Rules 325, 326, and 431 are consistent with the requirements of Section 6(b)(5) [19] of the Exchange Act, which requires that the rules of the Exchange be 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 in that they incorporate into the Exchange's rules recent SEC amendments to Exchange Act Rule 15c3–1 regarding the alternative method of computing net capital for broker-dealers that are part of a CSE.

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

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2005–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). 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

[15] 15 U.S.C. 78g(a).

[16] 12 CFR 220 *et seq.*

[17] 17 CFR 240.15c3–1e(c).

[18] These instruments are described in Exchange Act Rule 15c3–1e(c)(vi)(E), 17 CFR 240.15c3–1e(c)(vi)(E).

[19] 15 U.S.C. 78f(b)(5).

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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NYSE–2005–03 and should be submitted on or before August 29, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Nancy M. Morris,

Secretary.

[FR Doc. E6–12841 Filed 8–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54257; File No. SR–Phlx–2006–46]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Specialist Option Transaction Charge Credit Pilot Program

August 1, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 21, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 extend for a one-year period, until July 31, 2007, its current pilot program that provides for an option transaction charge credit of $0.21 per contract for Exchange options specialist units[5] that incur Phlx option transaction charges when a customer order is delivered to the limit order book via the Exchange's Options Floor Broker Management System (''FBMS'')[6] and is then sent to an away market and executed via the Intermarket Option Linkage (''Linkage'') under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Plan'')[7] as a Principal Acting as Agent Order (''P/A Order'').[8]

The pilot program in effect is currently scheduled to expire on July 31, 2006.[9] The text of the proposed rule change is available at the Commission's Public Reference Room, at the Office of the Secretary of the Exchange, and on the Exchange's Web site at *http://www.Phlx.com*.

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 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 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

Currently, the Exchange provides an option transaction charge credit of $0.21 per contract for Exchange options specialist units that incur Phlx option transaction charges when a customer order is delivered to the limit order book via FBMS and is then sent to an away market and executed via Linkage under the Plan as a P/A Order.

The purpose of this proposal is to continue to alleviate the potential economic burden of multiple transaction charges imposed on Exchange specialist units by establishing a credit for Exchange option transaction charges incurred by an Exchange specialist unit when a customer limit order placed on the limit order book by a Floor Broker[10] results in an execution of a P/A Order that is sent to another exchange via Linkage. The Exchange believes that continuing to give an options transaction charge credit of $0.21 per contract should encourage the use of Linkage and should allow the Exchange to remain competitive with other exchanges with respect to the assessment of Linkage-related fees.[11]

This proposal is to remain in effect as a pilot program until July 31, 2007.[12]

[20] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The terms ''specialist'' and ''specialist unit'' are used interchangeably.

[6] The FBMS is a component of the Exchange's Automated Options Market (AUTOM) System designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. *See* Phlx Rule 1080, Commentary .06.

[7] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Phlx as a participant in the Plan).

[8] A P/A order is an order for the principal account of a specialist (or equivalent entity on another participant exchange that is authorized to represent public customer orders), reflecting the terms of a related unexecuted public customer order for which the specialist is acting as agent. *See* Phlx Rule 1083(k)(i).

[9] *See* Securities Exchange Act Release No. 53761 (May 5, 2006), 71 FR 27768 (May 12, 2006) (SR–Phlx–2006–20). This proposal is scheduled to be in effect for the same time period as fees for Linkage Principal Orders (''P Orders'') and P/A Orders. *See* Securities Exchange Act Release No. 54233 (July 27, 2006) (SR–Phlx–2006–44).

[10] A Floor Broker who wishes to place a limit order on the limit order book must submit such a limit order electronically through the FBMS. *See* Phlx Rule 1063, Commentary .01. *See also* Phlx Rule 1080, Commentary .02(b).

[11] *See* Securities Exchange Act Release Nos. 53372 (February 24, 2006), 71 FR 11003 (March 3, 2006) (SR–CBOE–2006–10) (rebate of certain transaction fees to Designated Primary Market Makers related to the execution of outbound P/A orders) and 53526 (March 21, 2006), 71 FR 15794 (March 29, 2006) (SR–PCX–2006–19) (creating a credit associated with the fees a Market Maker is charged for executions that result from P/A Orders sent to and executed at away market centers). *See also* Securities Exchange Act Release No. 54064 (June 28, 2006), 71 FR 38438 (July 6, 2006) (SR–CBOE–2006–59).

[12] This proposal is in connection with an existing pilot program for Linkage P and P/A Orders and is in effect for the same time period as the pilot program for Linkage P and P/A Orders. The Exchange filed a separate proposed rule change to extend the fees for Linkage P and P/A orders for a

Continued