

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50734; File No. SR-NYSE-2004-48]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Create New NYSE Rule 416A (“Member and Member Organization Profile Information Updates and Quarterly Certifications Via the Electronic Filing Platform”) and To Amend NYSE Rule 476A (“Imposition of Fines for Minor Violations of Rules”), Adding New NYSE Rule 416A to the “List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A”

November 24, 2004.

On August 19, 2004, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with 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 proposed rule change to adopt new NYSE Rule 416A (“Member and Member organization Profile Information Updates and Quarterly Certifications Via the Electronic Filing Platform”), which rule would require members and member organizations to promptly update their organizational information via the Electronic Filing Platform, and to make quarterly certifications that their organizational information is complete and accurate. Additionally, the NYSE proposed an amendment to NYSE Rule 476A (“Imposition of Fines for Minor Violations of Rules”) to allow the Exchange to sanction members’ and member organizations’ minor violations of new NYSE Rule 416A pursuant to the minor fine provisions of NYSE Rule 476A. The NYSE amended the proposed rule change on October 12, 2004, which amendment completely replaced and superseded the original proposal. The proposed rule change, as amended, was published for comment in the **Federal Register** on October 25, 2004.³ The Commission received no comments on the proposal.

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 ⁴ and, in particular, the requirements of Section 6 of the Act ⁵ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ in that it is designed to promote just and equitable principles of trade, facilitate transactions in securities, 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 Commission also finds that the proposal is consistent with Section 6(b)(6) of the Act,⁷ which requires that members and persons associated with members be appropriately disciplined for violations of Exchange rules. Finally, the Commission finds the proposal is consistent with Rule 19d-1(c)(2) under the Act,⁸ which governs minor rule violation plans.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSE-2004-48), as amended, be, and it hereby is, approved.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50727; File No. SR-Phlx-2004-66]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Concentration Limit Listing Standards in Phlx Rule 1009A

November 23, 2004.

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 October 7, 2004, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”)

⁴ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(6).

⁸ 17 CFR 240.19d-1(c)(2).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Phlx. On October 25, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Phlx Rule 1009A, Designation of the Index, which applies to the listing of index options. Specifically, the Exchange proposes to increase certain concentration limit listing standards set forth in Phlx Rule 1009A(b) pursuant to which the Exchange may list certain narrow-based index options pursuant to Commission Rule 19b-4(e).⁴ The text of the proposed rule change is set forth below. Proposed new language is *italicized*; proposed deletions are [in brackets].

Rule 1009A

(a) No Change.

(b) Notwithstanding paragraph (a) above, the Exchange may trade options on a narrow-based index pursuant to Rule 19b-4(e) of the Exchange Act, if each of the following conditions is satisfied:

(1)-(5) No Change.

(6) No single component security represents more than [25%] *30%* of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% ([60%] *65%* for an index consisting of fewer than 25 component securities) of the weight of the index;

(i) With respect to the Gold/Silver Index, no single component shall account for more than 35% of the weight of the Index and the three highest weighted components shall not account for more than 65% of the weight of the Index. If the Index fails to meet this requirement, the Exchange shall reduce position limits to 8000 contracts on the Monday following expiration of the farthest-out, then trading, non-LEAP series.

(7)-(12) No Change.

³ See letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx to Nancy Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated October 22, 2004 (“Amendment No. 1”), in which the Phlx provided rationale for and requested accelerated approval of the proposed rule change.

⁴ 17 CFR 240.19b-4(e).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50559 (October 19, 2004), 69 FR 62314.