(6) General

There are a number of matters which are applicable to all, or a number, of the areas noted above. These include EDGAR, the Commission's electronic disclosure system, rulemaking procedures, training and education of staff examiners and analysts and sharing of information.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also discuss or comment on other proposals which would enhance uniformity in the existing scheme of state and federal regulation, while helping to maintain high standards of investor protection.

By the Commission.

Dated: April 9, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–9883 Filed 4–14–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39846; File Nos. SR–NYSE–98–06; SR–Amex–98–09; BSE–98–06; SR–CHX–98–08; SR–NASD–98–27; and SR–Phlx–98–15]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the American Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the Boston Stock Exchange, Inc., Chicago Stock Exchange, Inc., and National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc.; Relating to Modifications to the Market-Wide Circuit Breaker Provisions (''Trading Halts Due to Extraordinary Market Volatility'')

April 9, 1998.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] the New York Exchange, Inc. (''NYSE''), the American Stock Exchange, Inc. (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Stock Exchange, Inc. (''CHX''), the Philadelphia Stock Exchange, Inc. (''Phlx'') (individually, ''Exchange'' and collectively, ''Exchanges''), and the National Association of Securities Dealers, Inc. (''NASD''), submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), proposed rule changes relating to certain market-wide circuit breaker provisions.

Notices of the NYSE's and Amex's proposed rule changes were published for comment in the **Federal Register** on February 23, 1998 and February 27, 1998, respectively.[3] Four comment letters were received on the proposals.[4] On April 1, 1998, Amex filed an amendment to the proposed rule change.[5] On April 6, 1998, Phlx also filed an amendment to the proposed rule change.[6] This order approves the proposed rule changes of the NYSE and the Amex. This order also approves, on an accelerated basis, Amex's amendment to the proposed rule change. As discussed below, the Commission is also granting accelerated approval of the proposed rule changes of the BSE, CHX, NASD, and Phlx (as amended).

II. Background

Circuit breakers are coordinated cross-market trading halts that are intended to help avoid systemic breakdown when a severe one-day market drop of historic proportions prevents the financial markets from operating in an orderly manner. A decade ago, the securities and futures markets, in response to the most destabilizing U.S. market drop in over half a century,[7] introduced circuit breakers in order to offer investors and the markets an opportunity to assess information and positions when the markets experienced a severe, rapid decline.

In 1988, the Commission approved the Exchanges' circuit breaker proposals, along with the NASD's circuit breaker policy statement.[8] These rules provided for a one hour market-wide trading halt if the Dow Jones Industrial Average (''Dow'')[9] declined by 250 points from its previous day's close, and a two hour halt if, on that same day, it fell 400 points. Amendments approved by the SEC in July 1996 reduced the duration of the 250 and 400 points halts to one-half hour and one hour, respectively.[10] Amendments approved in January 1997 increased the trigger values to 350 and 550 points.[11] The Commission believed that the circuit breaker proposals would provide market participants with an opportunity during a severe market decline to reestablish an equilibrium between buying and selling interest in a more orderly fashion. The futures exchanges also adopted analogous trading halts to provide coordinated means to address potentially destabilizing market volatility.[12]

On October 27, 1997, the Dow (and U.S. markets generally) experienced a decline of 554 points, or 7.2%, to close at 7161.15. This marked the first time circuit breakers were triggered since their adoption. The first circuit breaker of one-half hour was triggered at 2:36

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

[2] 17 CFR 240.19b–4.

[3] See Exchange Act Release Nos. 39666 (February 13, 1998), 63 FR 9034 (February 23, 1998) (NYSE); 39689 (February 20, 1998), 63 FR 10054 (February 27, 1998) (Amex).

[4] See letter to Kaye Williams, Congressional and Legislative Affairs Commission, from Mark I. Klein (forwarded by Senator Diane Feinstein), dated February 11, 1998 (''Klein Letter''). See letters to Margaret H. McFarland, Deputy Secretary, Commission, from Options Clearing Corporation, dated March 23, 1998 (''OCC Letter'') from Chicago Board Options Exchange, Inc. (''CBOE''), dated March 23, 1998 (''CBOE Letter''). See letter to Kathryn Fulton, Congressional and Legislative Affairs, Commission, from Charles Wayne Emerson (forwarded by Senator Richard Shelby), dated February 18, 1998 (''Emerson Letter'').

[5] Amex Amendment No. 1 corrects a spelling error in the text of the proposed rule change. See Letter to Christine Richardson, Division of Market Regulation, Commission, from Michael Cavalier, Amex, dated April 1, 1998 (''Amex Amendment No. 1'').

[6] Phlx Amendment No. 1 replaces the term ''below'' with the term ''before'' in paragraph (a)(i) of the text of the proposed rule. See Letter to Michael Walinskas, Division of Market Regulation, Commission, from Carla J. Behnfeldt, Phlx, dated April 6, 1998.

[7] On October 19, 1987, the Dow Jones Industrial Average declined 22.6%.

[8] See Exchange Act Release No. 26198 (October 19, 1988), 53 FR41637 (NYSE, Amex, NASD, and CBOE).

[9] ''Dow Jones Industrial Average'' is a service mark of Dow Jones & Company, Inc.

[10] See Exchange Act Release Nos. 37457 (July 19, 1996), 61 FR 39176 (NYSE); 37458 (July 19, 1996), 61 FR 39167 (Amex); and 37459 (July 19, 1996), 61 FR 39172 (BSE, CBOE, CHX, and Phlx).

[11] See Exchange Act Release No. 38221 (January 31, 1997), 62 FR 5871 (February 7, 1997) (NYSE, Amex, CBOE, CHX, BSE, and Phlx). The Commission approved each of the Exchanges' revised circuit breaker rules on a one-year pilot basis which expired on January 31, 1998. See *id.* at 5874.

[12] See letters to Jean A. Webb, Secretary, Commodity Futures Trading Commission (''CFTC''), from Todd E. Petzel, Vice President, Financial Research, Chicago Mercantile Exchange (''CME''), dated September 1, 1988; from Paul J. Draths, Vice President and Secretary, Chicago Board of Trade (''CBOT''), dated July 29, 1988; from Milton M. Stein, Vice President, Regulation and Surveillance, New York Future Exchange (''NYFE''), dated September 2, 1988; and Michael Braude, President, Kansas City Board of Trade (''KCBT''), dated August 10, 1988.

p.m. when the Dow declined 350 points from the previous day's closing value. After the market reopened at 3:06 p.m., the Dow continued to decline another 200 points, triggering the second circuit breaker at 3:30 p.m. Because the second circuit breaker was triggered at 3:30 p.m., within the last hour of trading, the market was closed for the remainder of the day. It has been suggested that the triggering of the circuit breakers on October 27, 1997, was needless at best, and inappropriately halted trading. In addition, the circuit breakers' low point value level, close proximity to each other, and the fact that the second circuit breaker would close the market for the remainder of the day, may have contributed to selling pressure after the first halt was lifted. This triggering of the circuit breakers when the markets were operating smoothly prompted the markets to re-evaluate the operation and function of circuit breakers.

In January 1998, as a result of the events of October 27, 1997, the Exchanges adopted interim changes to the circuit breaker rules.[13] These changes provide, in part, that if the Dow falls 350 or more points below its previous trading day's closing value, trading in all stocks and equity-based options on the Exchanges will halt for one half-hour, except that if the 350 or more point decline is reached at or after 3:00 p.m.,[14] there will be no halt in trading. Furthermore, if, on the same day, the Dow drops 550 or more points from its previous trading day's close, trading in all stocks and equity-based options on the Exchanges will halt for one hour, except that if the 550 point decline occurs after 2:00 p.m., but before 3:00 p.m., the halt will be one-half hour instead of one hour. If, however, the 550 point drop occurs at or after 3:00 p.m., the Exchanges and Nasdaq will close for the remainder of the day. These interim changes were adopted only until the markets could agree on modifications to raise significantly the circuit breaker trigger levels. Subsequently, the markets agreed to the proposal being approved today, which is described below.

III. Description of the Proposal

Because the current circuit breaker provisions have been approved only until April 30, 1998, and because there is a general consensus among those in the securities industry that the current circuit breaker trigger levels are too low and too close together, the Exchanges have proposed to revise the levels to address these concerns.

The Exchanges[15] propose to establish new circuit breaker trigger levels for a one-day decline of 10%, 20% and 30% of the Dow, to be calculated at the beginning of each calendar quarter, using the average closing value of the Dow for the previous month to establish specific point values for the quarter.[16] Each trigger will be rounded to the nearest 50 points.[17]

Before 2:00 p.m.,[18] the halt for a 10% decline will be one hour. At or after 2:00 p.m. but before 2:30 p.m., the halt will be for one-half hour. If the 10% trigger value is reached at or after 2:30 p.m., the market will not halt at the 10% level and will continue trading.

The halt for a 20% decline will be two hours if triggered before 1:00 p.m. At or after 1:00 p.m. but before 2:00 p.m., the halt will be for one hour. If the 20% trigger value is reached at or after 2:00 p.m., trading will halt for the remainder of the day.[19] If the market declines by 30%, at any time, trading will be halted for the remainder of the day.

The futures exchanges trading stock index futures have proposed substantively identical circuit breaker proposals with the CFTC to halt trading in such contracts.[20] As discussed further below, the CME's proposal also would raise its daily price limit for the S&P 500 index futures from 90 points to a maximum daily downward price limit of 20%. Under the Exchanges' proposals, prior to 2:00 p.m., the securities markets will be permitted to trade in the range of 20% to 30% down; however, the CME's proposal will not permit the S&P 500 stock index futures market to trade below 20% down. Furthermore, the CME's proposal states that variation margin settlement values will be based on the limit price, rather than on a price derived from the closing index value. In other words, CME settlement values would be based on the 20% limit price, regardless of the prices at which the underlying stocks were trading at the close.

[13] See Exchange Act Release No. 39582 (January 26, 1998), 63 FR 5408 (February 2, 1998) (order granting accelerated approval of proposed rule changes by the NYSE, Amex, BSE, CHX, and Phlx). The proposed rule changes became effective on February 2, 1998 and were approved on a pilot basis until April 30, 1998. Although the NASD's general policy statement concerning circuit breakers expired on December 31, 1997, the NASD submitted a letter to the Commission stating that it would continue to follow, upon request from the Commission, a market-wide trading halt during the triggering of the intermarket circuit breakers. See Letter to Howard L. Kramer, Senior Associate Director, Office of Market Supervision, Division of Market Regulation, Commission, from Richard Kecthum, Chief Operating Officer and Executive Vice President, NASD, dated January 23, 1998.

[14] All time references are to Eastern time.

[15] The CBOE, Cincinnati Stock Exchange, Inc. (''CSE''), and the Pacific Exchange, Inc. (''PCX'', formerly PSE) have general rules that require them to halt trading during a triggering of the intermarket circuit breakers. Consequently, they do not need to file conforming rule changes because their circuit breaker halts will conform automatically to the halt periods adopted by the other exchanges. *See* Letters to Howard L. Kramer, Senior Associate Director, Office of Market Supervision, Division of Market Regulation, Commission, from Adam W. Gurwitz, Vice President Legal and Corporate Secretary, CSE, dated March 9, 1998; from David P. Semak, Vice President, Regulation, PCX, dated April 1, 1998; and CBOE Letter *supra* note 4.

Because the NASD's policy statement has expired, it is filing a proposed rule change to codify, in Interpretive material, on a two-year pilot basis, the NASD's agreement to halt, upon SEC request, all domestic trading in both securities listed on Nasdaq and all equity and equity-related securities trading over-the-counter market, should other major securities markets declare a market-wide trading halt upon the triggering of the circuit breakers. See File No. SR–NASD–98–27. The Commission notes that it has a standing request with the NASD that the NASD halt trading as quickly as practicable whenever the NYSE and other equity markets have suspended trading. The Exchanges' and the NASD's proposed rule filings do not affect the Commission's standing request.

[16] The NYSE has stated that its Data and Statistics Department will calculate the point values for the circuit breaker trigger levels after the close of trading on the last day of the quarter. The NYSE will disseminate the levels to the media that evening. Before the opening on the next trading day, the NYSE's Floor Operations Division will disseminate the new trigger levels via its ''hoot and holler system'' to all other U.S. market centers which trade stocks, stock options, stock index options, stock index futures and options on such futures, as well as to the SEC and CFTC. The circuit breaker trigger levels also will be disseminated as a message on the ticker tape and as a CMS broadcast to SuperDOT subscribers. The NYSE's Market Surveillance Division also will issue an Information Memorandum. *See* Letter to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, Commission, from Agnes Gautier, Vice President, Market Surveillance, NYSE, dated March 5, 1998 (''NYSE Letter'').

[17] For example, if the average of the Dow closing values for the previous month is 7700, 10% of such average would be 770; this would be rounded to the nearest 50 points to create a circuit breaker trigger level of 750. In addition, if a trigger level is midway between two points, it will be rounded down, *e.g.*, 825 would be rounded to 800, and 875 would be rounded to 850. See *id*.

[18] All time references are to Eastern time.

[19] The NYSE has requested that the Commission extend the ''safe harbor'' provisions of rule 10b–18 under the Exchange Act to cover corporate repurchases effected at the reopening on the day of the halt, during the last half-hour prior to the scheduled close of trading on the day of the halt, and at the next day's opening if the market-wide halt is in effect at the scheduled close of trading, provided that the other restrictions in Rule 10b–18 are met in the execution of any repurchase order. See Letter to Jonathan Katz, Secretary, Commission, from James E. Buck, Senior Vice President and Secretary, NYSE, dated January 8, 1998. The Commission currently is evaluating this request.

[20] See Letters to Jean A. Webb, Secretary, CFTC, from Richard J. McDonald, Vice President, Research, CME, dated March 9, 1998 (''CME Letter''); from Paul J. Draths, Vice President and Secretary, CBOT, dated March 13, 1998; from Jean Butler Furlan, Chief Economist, NYFE, dated February 12, 1998; and from Jeff C. Borchardt, Senior Vice President, KCBT, dated March 10, 1998 (''KCBT Letter''). See *infra* part V.

IV. Summary of Comments

The Commission received four comments on the Exchanges' proposals.[21] The Klein and Emerson Letters both opposed the Exchanges' proposals to increase the circuit breaker trigger levels to 10%, 20% and 30%.[22] The OCC Letter generally supported the Exchanges' circuit breaker proposals except insofar as they would allow the market to reopen following a 20% decline prior to 2:00 p.m. EST. The CBOE Letter generally supported the proposals. Both the OCC and CBOE Letters, however, expressed concern over the CME's rule change proposal,[23] noting features of the proposal that would result in less than complete coordination among the stock, options and futures markets.

V. Commission Findings and Conclusions

After careful review of the Exchanges' proposed amendments to the circuit breaker rules and for the reasons discussed below, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to both a national securities exchange and a national securities association, and, in particular with the requirements of Sections 6(b)(5), 11A(a)(1) and 15A(b)(6).[24] The proposals are 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, to foster competition and coordination with persons engaged in regulating securities, and to protect investors and the public interest.

In general, the Commission believes that markets function best when they are open and unencumbered by artificial constraints like circuit breakers. For this reason, the Commission believes that mechanisms like circuit breakers, which impede the natural functioning of markets, should only be imposed in the most extreme circumstances. For circuit breakers to be of any value, they should only be used on those rare occasions when the market decline is of historic proportions and, as a result, the markets and supporting technology face broad disorder.

Circuit breakers were meant from their inception to be triggered only in truly extraordinary circumstances—*i.e.*, a severe market decline when the prices have dropped so dramatically that liquidity and credit dry up, and when prices threaten to free fall. When the circuit breakers initially were adopted in 1988, they were triggered by 250 and 400 point declines in the Dow, which at that time represented declines of approximately 12% and 19%, respectively. As a result of the dramatic increase in the Dow over the past decade, the present circuit breaker levels of 350 and 550 points represent declines of only 4% and 6%.[25] The likelihood has increased significantly that these existing circuit breakers will trigger during less than extraordinary market declines. In fact, the drop that occurred on October 27, 1997, did not represent the type of extraordinary decline that circuit breakers were meant to halt.[26] When the circuit breakers were activated, the markets were operating efficiently, and there was no threat of imminent market breakdown. The Commission believes that the current circuit breakers trigger levels of 350 and 550 are too low and too close together, and have the potential to cause premature or unnecessary trading halts.[27] Indeed, when the Commission approved the raising of circuit breakers last year from 250/400 points to 350/550 points, it noted that such a raise, while an improvement over existing levels, was insufficient and that the markets would need to devise substantially higher trigger levels.[28]

In considering the Exchanges' proposals to modify the circuit breaker trigger levels, the Commission also has taken into account the guidelines expressed by the Working Group on Financial Markets (''Working Group'') when it originally recommended the adoption of circuit breaker procedures in 1988.[29] At that time, the Working Group's Interim Report on Financial Markets stressed that the circuit breaker trigger levels should be ''broad enough to be tripped only on rare occasions, but * * * sufficient to support the ability of the payments and credit systems to keep pace with extraordinarily large market declines.''[30] The Working Group's report also cautioned that the circuit breaker trigger levels should be reviewed by market regulators periodically to reflect market levels and to adjust the point-decline triggers to ensure that market-wide halts be imposed only after extraordinary market declines.

The Commission believes that the Exchanges' current proposals of 10%, 20% and 30% circuit breaker trigger levels reflect the type of severe one-day market decline that circuit breakers are intended to address. Over the past decade, the Dow has increased to the point where the current circuit breaker trigger levels of 350 and 550 points no longer represent a significant market decline. Thus, the Commission believes that an increase in the circuit breaker trigger levels is necessary and appropriate in order to prevent the markets from closing as a result of a non-destabilizing decline. The Commission also believes that not only will the Exchanges' proposals return circuit breakers to levels consistent with their intended design and function, but that the proposed levels of 10%, 20% and 30% should not cause premature or unnecessary trading halts.

The Commission also believes that translating the 10%, 20% and 30% circuit breaker trigger levels into point valuations, as well as rounding each of the trigger point values to the nearest 50 points will provide clarity to and a better comprehension of the quarterly circuit breaker trigger levels to all market participants.[31] The Commission also finds satisfactory the methods by which the NYSE will disseminate information concerning the quarterly circuit breaker trigger levels to market participants and investors.[32] The Commission believes that these information dissemination procedures will ensure that all U.S. market centers which trade stocks, stock options, stock

[21] See *supra* note 4.

[22] *Id.*

[23] See *infra* part V.

[24] See 15 U.S.C. 78f(b), 78k–1 and 78*o*–3. In approving this rule change, the Commission notes that it has considered the proposals' impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[25] As of March 30, 1998, a 350 and 550 point decline in the Dow represented a percentage decline of 3.99% and 6.26%, respectively.

[26] When the 350-point trigger was reached on October 27, the stock market was down only 4.54%, a level that had been reached on 11 previous days since 1945.

[27] It has been suggested that, when the 350 point circuit breaker was triggered on October 27, 1997, and the markets closed for thirty minutes, upon the reopening, ''the existence of a second trigger only 200 points lower produced a destabilizing 'gravitational pull,' motivating market participants to sell before the second trigger was reached to avoid being locked into their positions overnight.'' See OCC Letter, *supra* note 4; see also CBOE Letter, *supra* note 4.

[28] See Exchange Act Release No. 38221 (January 31, 1997), 62 FR 5871, 5875 (February 7, 1997).

[29] The Working Group on Financial Markets was established by the President in March 1988 in response to the 1987 market break. It consists of the Secretary of the Department of the Treasury and the Chairmen of the Commission, the CFTC, and the Board of Governors of the Federal Reserve System. Its mandate is to determine the extent to which coordinated regulatory action is necessary to strengthen the nation's financial markets.

[30] See Working Group on Financial Markets, Interim Report of the Working Group on Financial Markets, May 16, 1988.

[31] See *supra* note 17 (describing how the trigger levels will be calculated).

[32] See *supra* note 16 (describing the methods by which the NYSE will disseminate information concerning the quarterly circuit breaker trigger point levels).

index options, stock index futures and options on such futures, the SEC, the CFTC, and public investors are given notice of the new quarterly circuit breaker trigger levels before the opening of trading on the next trading day following the close of trading on the last day of the quarter.

As stated above, the Commission, in general, does not favor market closings. The Commission believes that as long as the markets are functioning efficiently, they should remain open. The Commission realizes, however, that on those rare occasions of severe market decline and systemic overload, it may be necessary to provide a short pause for participants to reassess market conditions. The Commission notes that providing a brief pause in trading was the original purpose of circuit breakers. In order to achieve an orderly daily close and permit completion of market activities in a fair way, the Commission firmly believes that every attempt should be made to reopen the markets after the triggering of a circuit breaker if it is triggered early in the day.

The Commission notes that investors have come to rely on the markets being open until 4:00 p.m., and make their investment decisions on that basis. When an early close prevents investors from making their trades, resulting investment decisions become colored by uncertainty. Another concern is the uncertainty created for mutual funds in the event of an early close due to a triggered circuit breaker. Investors in mutual funds who place orders to redeem shares before 4:00 p.m. generally will receive that day's net asset value for the fund shares. When a circuit breaker closes trading for the day prematurely, investors who place orders to redeem shares may not receive that day's net asset value.[33] In addition, an early close could be disruptive to the unwinding of derivative-related index arbitrage positions.

The Commission believes that the Exchanges' proposals sufficiently address the need for the markets to remain open or to reopen during the trading day so that an orderly market close can occur. More specifically, the Exchanges' proposals strike a reasonable balance between the need to halt trading temporarily during periods of extraordinary market volatility with the need to provide for an open market place for trading securities and an orderly market close. The Commission notes that the current proposals also reflect a consensus among the Exchanges and the NASD as to the late-in-the-day timing mechanisms for the triggering of the circuit breakers. Overall, the Commission believes that the proposed changes to the circuit breaker procedures are appropriate to prevent the markets from closing for the day absent significant and extraordinary declines.

The Exchanges' proposals are contingent on other markets adopting substantively identical proposals. In this regard, the Commission notes that all of the existing U.S. stock and options exchanges, as well as the NASD, have either submitted revised circuit breaker pilot programs to reflect the NYSE proposal or have agreed to comply with the provisions of such programs.[34] The futures exchange are also adopting complementary trading halts to maintain the existing coordinated means to address potentially destabilizing market volatility.[35] The Commission notes, however, that the CME's proposal does diverge from the proposals of the securities markets and the other futures markets in one manner.[36] The CME's proposal calls for a 20% price limit to remain in effect even after the equity markets have reopened following a trading halt due to a 20% decline in the Dow.[37] In other words, the CME will not permit the futures prices to fall below 20%, whereas the securities markets could drop to a maximum of 30% after reopening from the 20% circuit breaker.

The Commission believes that a similar difference currently exists between the CME's rules and the securities markets and other futures markets in that the CME will not permit S&P 500 futures to trade below a total daily price limit of 90 S&P 500 points from the settlement price of the preceding regular trading session. In other words, under the CME's present rule, the securities markets potentially could reopen and fall further after a 550 point drop that occurs prior to 3:00 p.m., while the S&P 500 futures could not fall further because the total daily 90 point price limit in the S&P 500 futures still would remain in effect. Despite this current difference, the Commission previously has determined that the CME's current rule is substantively identical to those of the securities markets and the other futures markets.[38] Thus, the Commission believes that the CME's proposed rule change is substantively identical to those of the securities market and other futures markets for purposes of the effectiveness of other circuit breaker rules.[39]

The CBOE and OCC Letters raise a valid issue of concern regarding the CME's proposal to amend its margining procedures so that a stock index future's daily variation margin payment is capped at 20%, regardless of whether the underlying stock market has declined beyond 20%. This raises the possibility of a mismatch between the margin and capital treatment of a stock index option position and its futures hedge. The Commission urges the CME either to reconsider its proposal to cap variation margin at 20% or to work out an alternative margining procedure with the options exchanges. Nevertheless, because this issue concerns margin payments rather than the decision to halt trading, as well as the fact that the CME will permit its stock index futures to decline to a virtually historic amount (20%), the Commission does not believe that the CME's alternative proposal undermines the conclusion that the CME's circuit breaker trading halt is substantively identical to the securities markets' circuit breaker proposals.

The Commission finds good cause for approving Amex Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Amex Amendment No. 1 corrects a spelling error contained in the text of the proposed rule and does not substantively modify the proposal. Accordingly, the Commission believes that it is consistent with Sections 6, 11A and 19(b) of the Act to approve Amex Amendment No. 1 on an accelerated basis.

The Commission finds good cause for approving the proposed rule changes by the BSE, CHX, NASD, and Phlx, as amended, 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 BSE's, CHX's, NASD's and Phlx's proposed rule changes are substantively identical to those proposed by the NYSE and Amex. The BSE's, CHX's, NASD's and Phlx's proposals raise no issues that are not raised by the NYSE and Amex.

[33] See also Letter to Arthur J. Levitt, Jr., Chairman, Commission, from Matthew P. Fink, President, Investment Company Institute, dated January 27, 1998 (''[C]losing the markets early could be harmful to the over 60 million mutual fund shareholders who have come to expect that the markets will close at 4:00 p.m., and that orders placed up until that time will get that day's net asset value.'').

[34] See *supra* part III.

[35] See *supra* note 20.

[36] The KCBT's proposal is nearly identical to the CME's and, therefore, also diverges from the proposals of the securities markets and other futures markets. See KCBT Letter.

[37] See CME Letter.

[38] See Exchange Act Release No. 39582 (January 26, 1998), 63 FR 5408 (February 2, 1998).

[39] In making this determination, the Commission does not want to imply that it supports the CME's price limit of 20%. Clearly, a price limit of 30% would better align the CME's stock index futures contracts with the stock and option markets.

Additionally, the Commission notes that the NYSE and Amex proposal were each published for a full notice and comment period in the **Federal Register**.[40] The Commission notes that Phlx Amendment No. 1 corrects a typographical error in the text of the proposed rule and does not substantively modify Phlx's proposal. The Commission believes that it is important that the Exchanges' circuit breaker procedures be approved simultaneously to preserve the existence of uniform market-wide circuit breaker provisions. Accordingly, the Commission believes that it is consistent with Sections 6, 11A, 15A and 91(b) of the Act to approve the BSE's, CHX's, NASD's and Phlx's, as amended, proposed rule changes on an accelerated basis.

As part of the Commission's belief that the circuit breaker mechanisms must be coordinated across the U.S. equity, futures and options markets to be effective in times of extreme market volatility, and to ensure continued market coordination, the Exchanges' proposals will become effective simultaneously beginning on April 15, 1998.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the BSE, CHX, NASD and Phlx proposals; Amex Amendment No. 1; and Phlx Amendment No. 1, including whether the proposed rule changes are consistent with the Act. 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 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 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 Nos. SR–Amex–98–15; SR–BSE–98–03; SR–CHX–98–08; SR–NASD–98–27; and SR–Phlx–98–15 and should be submitted by May 6, 1998.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[41] that the proposed rule changes (SR–NYSE–98–06; SR–Amex–98–09; SR–BSE–98–03; SR–CHX–98–08; SR–NASD–98–27; and SR–Phlx–98–15) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[42]

Jonathan G. Katz,

Secretary.

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[40] See Exchange Act Release Nos. 39666 (February 13, 1998), 63 FR 9034 (February 23, 1998) (SR–NYSE–98–06); 39689 (February 20, 1998), 63 FR 10054 (February 27, 1998) (SR–Amex–98–09).

[41] 15 U.S.C. 78s(b)(2).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39839; File No. SR–NYSE–97–37]

Self-Regulatory Organizations; New York Stock Exchange, Inc.: Order Granting Approval to Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Shareholder Approval Policy

April 8, 1998.

I. Introduction

On December 23, 1997, the New York Stock Exchange, Inc. (''NYSE'' 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 proposed rule change to modify its shareholder approval policy (the ''Policy''), contained in Paragraphs 312.03 and 312.04 of the Exchange's Listed Company Manual (the ''Manual''), to provide greater flexibility for listed companies to adopt stock option and similar plans (''Plans'') without shareholder approval.

Notice of the proposed rule change and Amendment No. 1 to the proposed rule change,[3] together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 39659 (February 12, 1998), 63 FR 9036 (February 23, 1998). No comments were received on the proposal.

II. Description

In September 1997, the Commission approved amendments to the Policy regarding related-party transactions and private sales.[4] The current proposed rule change relates to that portion of the Policy requiring shareholder approval of certain Plans. Currently, the Policy requires a listed company to seek shareholder approval of all stock option plans that are not ''broadly-based'' with an exception for stock or options issued as an inducement for employment to a person not previously employed by the company.

However, in light of recent changes to the legal requirements governing shareholder approval of Plans,[5] and at the urging of listed companies, the Exchange reviewed the Policy with its various constituents. According to the Exchange, the consensus favored some relaxation in the Policy, but not a total repeal of the shareholder approval requirement for Plans. Specifically, the general view was to require shareholder approval when there is the potential for a material dilution of shareholder's equity, with the threshold based on the cumulative dilution of an issuer's non-broad-based Plans, and not on a single Plan.[6] As a result, the NYSE has proposed to amend Paragraph 312.03(a) of the Policy to exempt from shareholder approval non-broad-based Plans in which: (1) No single officer or director acquires more than one percent of the shares of the issuer's common stock outstanding at the time the Plan is adopted; and (2) the cumulative dilution of all non-broad-based Plans of the issuer does not exceed five percent of the issuer's common stock outstanding at the time the Plan is adopted.

In addition, the Exchange has proposed to define ''broadly-based Plan'' in Paragraph 312.04(g).[7] The proposed definition generally would require a review of a number of factors, including, but not limited to, the number of persons covered by the Plan

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from James E. Buck, Senior Vice President, NYSE, to Heather Seidel, Attorney, Market Regulation, Commission, dated January 28, 1998. Amendment No. 1 clarified that there is no relationship between the Exchange's definition of ''broadly-based'' and other definitions of similar terms under federal law. Amendment No. 1 also states why the Exchange is amending Paragraph 312.03(a) of the Manual to substitute the word ''material'' for ''essential.'' Finally, Amendment No. 1 explains why the proposal amends Paragraph 312.04(c) to replace ''affiliate'' with ''subsidiary.''

[4] *See* Securities Exchange Act Release No. 39098 (September 19, 1997) 62 FR 50979 (September 29, 1997). The September 1997 amendments to the Policy and the current proposed amendments resulted from a broad review of the Policy conducted by the Exchange.

[5] The Commission recently amended its rules in this area. *See* Rule 16b–3(d) under the Act, as amended in Securities Exchange Act Release No. 37260 (May 31, 1996) 61 FR 30376 (June 14, 1996).

[6] Constituents also asked for more guidance on the definition of a ''broad-based'' Plan.

[7] *See* note 14 and accompanying text.