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.

[FR Doc. 98–10027 Filed 4–14–98; 8:45 am]

BILLING CODE 8010–01–M

[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.

and the nature of the company's employees, such as whether there are separate compensation arrangements for salaried and hour employees. In its filing, the NYSE noted that companies will be able to discuss their proposed Plans with the Exchange staff to seek guidance on whether the Exchange considers such Plans to be ''broadly-based.''

Further, in order to provide a level of certainty for companies, the definition of a ''broadly-based'' plan states that the Exchange will consider any Plan in which at least 20 percent of an issuer's employees are eligible to receive stock or options, and the majority of those eligible are neither officers nor directors (the ''20% test''), to be broadly-based. However, the Exchange will not automatically consider a Plan that does not meet this 20% test to be narrowly-based. Rather, the proposed rule change encourages a listed company adopting a Plan that it believes to be broadly-based but that fails the 20% test to discuss the Plan with Exchange staff.[8]

The proposed rule change also amends Paragraph 312.04(c) to clarify that, in calculating a company's outstanding shares for the purpose of Paragraph 3112.03, the company must exclude shares held by ''subsidiaries,'' instead of ''affiliates.'' The Exchange will interpret the term ''subsidiary'' to include any majority-owned subsidiary of a listed company.[9] Finally, the proposed rule change also amends the exception in Paragraph 312.03(a)(3) for stock or options issued as an inducement for employment to a person not previously employed by the company, to state that it must be a material inducement (as opposed to an inducement essential) to such person's entering into a employment contract with the company.

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, with the requirements of Section 6(b).[10] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public,[12] in that it provides greater flexibility for issuers to adopt certain non-broad-based Plans while preserving the significant shareholder approval rights afforded under the Policy.

The Commission believes it is consistent with the Act to allow the Exchange to exempt from shareholder approval certain non-broad-based Plans that should not materially dilute shareholders equity, while still requiring shareholder approval for Plans that would have a material effect on a shareholder's equity in the company. The proposed rule change should protect shareholder rights by exempting from shareholder approval only those Plans in which a single officer or director does not acquire more than one percent of the shares of common stock outstanding at the time the Plan is adopted, and where the cumulative dilution of all non-broad-based Plans does not exceed five percent of the common stock outstanding at the time the Plan is adopted. The Commission believes the one percent and five percent thresholds appear to adequately safeguard shareholders rights by still requiring approval of those plans that will have a material effect on shareholder equity while allowing a listed company appropriate flexibility in establishing compensation policies.[13]

The Commission also believes that the Exchange's definition of ''broadly-based'' Plan is reasonable. The Commission notes that it is based on current interpretations used by the Exchange to determine whether a Plan is broadly-based, and should provide guidance to listed companies and shareholders while still allowing the Exchange to review plans on a case-by-case basis. The Commission also notes that the NYSE's definition does not generally correspond to definitions regarding the scope of stock options plans used in other contexts.[14] The Commission also notes that the Exchange will not automatically consider a Plan that does not meet the 20% test to be narrowly-based, but rather encourages a listed company adopting a Plan that it believes to be broadly-based but that fails the 20% test to discuss the Plan with Exchange staff.[15]

The Commission believes that the proposed role change substituting ''subsidiary'' for ''affiliate'' in Paragraph 312.04(c) is reasonable because it eliminates any ambiguity pertaining to whether shares held by a natural person who controls a company are excluded from the calculation of when shareholder approval is required in Paragraph 312.03. The NYSE states it never intended to exclude the shares of such persons in calculating shares actually issued and outstanding for purposes of determining whether shareholder approval is required under Paragraph 312.03. The Commission agrees with the NYSE that using ''subsidiary'' clarifies this issue because a subsidiary is generally defined to include only companies, not natural persons. The Commission notes that the NYSE will interpret the term to include any majority-owned subsidiary of the listed company. Also, the Commission notes that other self-regulatory organizations use the term ''subsidiary'' in similar rules regarding shareholder approval.[16]

Finally, the Commission believes it is reasonable for the Exchange to amend Paragraph 312.03(a)(3) to require that a stock option grant be a ''material'' inducement, rather than an ''essential'' one, to a person's entering into an employment contract, based on the Exchange's belief that a ''materiality'' standard will be more workable, yet still will achieve the NYSE's goal of ensuring that the stock option grant be an important aspect of an employment decision in order for it to qualify as an exemption to the requirement of shareholder approval.

In summary, the Commission believes that the changes proposed by the NYSE will provide listed companies with more flexibility in issuing stock option or purchase plans while still adequately protecting shareholder rights to approve those plans that will have a material effect on their equity. In addition, the other changes should provide some guidance to listed companies and shareholders concerning the type of

[8] The Commission notes that the language in proposed Paragraph 312.04(g) states that the 20% test is a non-exclusive safe harbor. The Commission notes that all plans that meet the 20% test will be considered broadly-based by the NYSE. The safe harbor is non-exclusive in that plans that do not meet the 20% test may still be deemed broadly-based after discussion with Exchange staff. Phone conversation between Mike Simon, NYSE, and Heather Seidel, Attorney, Market Regulation, Commission, on February 11, 1998.

[9] *See* Amendment No. 1, *supra* note 3.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78(b)(5).

[12] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] The Commission notes that the five percent threshold is based on the Exchange's review of the Plans of 29 NYSE listed companies. *See* Notice Release.

[14] Amendment No. 1, *supra* note 3. *See e.g.*, Sections 401(a)(26), 410 and 423 of the Internal Revenue Code (26 U.S.C. 401(a)(26), 410 and 423) and Section 201(2) of the Employee Retirement Income Security Act (29 U.S.C. 1051(2)).

[15] *See* note 8, *supra*.

[16] *See* Chicago Stock Exchange Article XXVII, Rule 1900I(j)(vi); Pacific Exchange Rule 3.3(d), Commentary .01; and National Association of Securities Dealers Rule 4460(i)(3).

Plans that need to receive shareholder approval while still providing the NYSE with a certain amount of flexibility to review such Plans under the shareholder approval requirements on a case-by-case basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSE–97–37), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–9885 Filed 4–14–98; 8:45 am]

BILLING CODE 8010–01–M

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3045; Amendment #7]

State of Florida

In accordance with information received from the Federal Emergency Management Agency dated April 1, 1998, the above-numbered declaration is hereby amended to extend the deadline for filing applications for physical damage as a direct result of this disaster to May 6, 1998. The deadline for filing applications for economic injury remains October 6, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 7, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–9959 Filed 4–14–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3069 Amendment #3]

State of Georgia

In accordance with a notice from the Federal Emergency Management Agency dated April 2, 1998, the above-numbered Declaration is hereby amended to include Butts, Chatham, Muscogee, and Richmond Counties in the State of Georgia as a disaster area due to damages caused by severe storms and flooding beginning on March 7, 1998 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Columbia, Henry, and Newton Counties in Georgia; Beauford, Edgefield, and Jasper Counties in South Carolina; and Lee County, Alabama. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is May 10, 1998 and for economic injury the termination date is December 11, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 7, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–9958 Filed 4–14–98; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9827]

Commonwealth of Massachusetts (And Contiguous Counties in Connecticut, New York, and Vermont)

Berkshire County and the contiguous Counties of Franklin, Hampden, and Hampshire in Massachusetts; Litchfield County, Connecticut; Columbia, Dutchess, and Rensselear Counties in New York; and Bennington County, Vermont constitute an economic injury disaster loan area as a result of a fire that occurred on March 29, 1998 in the City of Williamstown. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on January 7, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl., Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury numbers are 982800 for Connecticut, 982900 for New York, and 983000 for Vermont.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Date: April 7, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–9962 Filed 4–14–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3075]

State of Michigan

Alpena County and the contiguous Counties of Alcona, Montmorency, Oscoda, and Presque Isle in the State of Michigan constitute a disaster area as a result of damages caused by severe storms and flooding that occurred March 31 through April 1, 1998. Applications for loans for physical damage from this disaster may be filed until the close of business on June 8, 1998 and for economic injury until the close of business on January 8, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.250
Homeowners Without Credit Available Elsewhere	3.625
Businesses With Credit Available Elsewhere	8.000
Businesses And Non-profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses And Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 307506 and for economic injury the number is 983200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 8, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–9961 Filed 4–14–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3074]

State of Minnesota

As a result of the President's major disaster declaration on April 1, 1998, and amendments thereto on April 1 and 3, I find that Brown, Cottonwood, LeSueur, Nicollet, and Rice Counties in the State of Minnesota constitute a disaster area due to damages caused by severe storms and tornadoes that occurred on March 29, 1998.