4. Applicants state that an investment by the Funds of Funds in the Underlying Funds increases the assets of the Underlying Funds, which should enable the Underlying Funds to control and reduce their expense ratios because their expenses will be spread over a larger asset base. Applicants further state that an Underlying Fund may experience savings because it would be servicing only one account 9*i.e.*, the Fund of Funds), instead of multiple accounts of the shareholders of the Fund of Funds. No Underlying Fund will bear any expenses of a Fund of Funds that exceed Net Benefits, as defined in the condition below, to the Underlying Fund from the arrangement.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act provide that an affiliated person of a registered investment company, or an affiliate of such person, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the Commission has issued an order approving the arrangement. Each of the Underlying Funds and Funds of Funds advised by ACM could be deemed to be under common control with all the other Underlying Funds and Funds of Funds, and therefore, affiliated persons of each other. Consequently, the Service Agreement could be deemed to be a joint transaction.

2. Rule 17d–1 under the Act provides that, in passing upon a joint arrangement under the rule, the Commission considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from, or less advantageous than that of other participants.

3. Applicants request an order under section 17(d) and rule 17d–1 to permit them to enter into and operate under the Service Agreement. Applicants contend that each Underlying Fund will pay a Fund of Funds' expenses only in direct proportion to the average daily value of each Underlying Fund's shares owned by the Fund of Funds to ensure that the Fund of Funds' expenses are borne proportionately and fairly. Applicants also state that prior to an Underlying Fund's entering into the Service Agreement, and at least annually thereafter, the board of directors of the Underlying Fund (the ''Board''), including a majority of directors who are not interested persons of the Underlying Fund as defined in section 2(a)(19) of the Act (''Disinterested Directors''), must determine that the Service Agreement will result in Net Benefits, as defined in the condition below, to the Underlying Fund. In making the annual determination, one of the factors that the Board must consider is the amount of Net Benefits actually experienced by each class of shareholders of the Underlying Fund and the Underlying Fund as a whole during the preceding year. For these reasons, applicants believe that the requested relief meets the standards of section 17(d) and rule 17d–1.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Prior to an Underlying Fund's entering into a Service Agreement, and at least annually thereafter, the Board of the Underlying Fund, including a majority of the Disinterested Directors, must determine that the Service Agreement will result in quantifiable benefits to each class of shareholders of the Underlying Fund and to the Underlying Fund as a whole that will exceed the costs of the Service Agreement borne by each class of shareholders of the Underlying Fund and by the Underlying Fund as a whole (''Net Benefits''). In making the annual determination, one of the factors the Board must consider is the amount of Net Benefits actually experienced by each class of shareholders of the Underlying Fund and the Underlying Fund as a whole during the preceding year. The Underlying Fund will preserve for a period of not less than six years from the date of a Board determination, the first two years in an easily accessible place, a record of the determination and the basis and information upon which the determination was made. This record will be subject to examination by the Commission and its staff.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–21557 Filed 8–24–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44721; File No. SR–NYSE–2001–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Exchange Fees

August 20, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 6, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the NYSE. 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 NYSE proposes to amend Paragraph 902.04 of the Exchange's Listed Company Manual (the ''Manual'') to conform the minimum continuing annual listing fee for non-U.S. companies to that applied to domestic companies.

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 NYSE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently amended its fee schedule to implement a minimum continuing annual listing fee for domestic issuers (excluding closed end funds) of $35,000, matching that which was already in place for non-U.S. issuers.[3] That filing included a

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

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 43741 (Dec. 19, 2000), 65 FR 82429, (Dec. 28, 2000) (Order approving File No. SR–NYSE–00–47 relating to listed company fees).

provision for companies with more than one class of common stock in which more than one issue is below the new minimum. It provided that for such companies, only the class with the most shares outstanding would pay the new minimum, while the other class(es) would continue to be charged at the lower minimum rates previously in effect.

The Exchange inadvertently neglected at that time to extend the relief for multi-class companies to non-U.S. issuers. Realizing that consistency on this point is appropriate, the Exchange proposes to apply the relief for multi-class issuers to non-U.S. companies as well.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(4) [4] that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[5] and subparagraph (f)(6) of Rule 19b–4 thereunder.[6]

The Commission notes that under Rule 19b-4(f)(6)(iii),[7] the proposed does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange requested that the Commission designate that the proposed rule change does not become operative for 15 days after the date of its filing so that the benefits of the proposed rule change are available to closed end funds more quickly. The Commission believes that designating the operative date of the proposal for 15 days after the date of the proposal's filing is consistent with the protection of investors and the public interest.[8]

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the SR–NYSE–2001–21and should be submitted September 17, 2001.

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

Jonathan G. Katz,

Secretary.

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[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formulation. 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44726; File No. SR–Phlx–2001–66]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Extend the Hours During Which Certain Orders May Be Executed on PACE

August 20, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, (''Act'') [1] and Rule 19b–4 [2] thereunder, notice is hereby given that on July 16, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. On August 8, 2001, the Exchange amended the proposal.[3] The Phlx filed the proposal pursuant to section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f)(5) [5] thereunder, rendering the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested person.

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

The Exchange proposes to amend Supplementary Material .17 to Phlx Rule 229 to extend the time period during which certain orders may be executed on the Philadelphia Stock Exchange Automated Communication and Execution System (''PACE''). The text of the proposed rule change is below. Additions are in italics; deletions are in brackets.

Rule 229. Philadelphia Stock Exchange Automated Communication and Execution System (PACE)

* * * * *

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

[2] 17 CFR 240.19b–4.

[3] *See* August 7, 2001 letter from Carla Behnfeldt, Director, Legal Department, New Product Development Group, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), SEC, and attachments (''Amendment No. 1''). Amendment No. 1 completely replaces and supersedes the original proposal. The Phlx made technical changes to the proposed rule language subsequent to filing Amendment No. 1. Telephone conversation between Edith Hallahan, Deputy General Counsel, Phlx, and Alton Harvey, Office Chief, Office of Market Watch, Division, SEC, August 20, 2001.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(5).