

forth in Section 703.16(B) of the Manual and (2) NYSE complies with the commitments undertaken by the other SRO set forth in the prior order, including any surveillance-sharing arrangements with a foreign market.

The Commission believes that NYSE's proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,²⁴ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange's proposal also requires the value of the index or portfolio underlying an ETF based on a global or international index to be disseminated at least once every 60 seconds during Exchange trading hours.²⁵ In addition, an IIV, which represents an estimate of the value of a share of each ETF, must be updated and disseminated at least once every 15 seconds during the time an ETF trades on the Exchange.²⁶ The IIV will be updated to reflect changes in the exchange rate between the U.S. dollar and the currency in which any index or portfolio component stock is denominated. In the event that an underlying index or portfolio value is no longer calculated or disseminated, the Exchange has represented that it would commence delisting proceedings for the associated ETF. Furthermore, the issuer of an ETF listed under the proposed rules will be required to represent that it will calculate the NAV and make it available daily to all market participants at the same time.²⁷

The Exchange's trading halt rules are reasonably designed to prevent trading in an ETF when transparency cannot be assured. Proposed NYSE Rule 1100(f)(1) provides that, when the Exchange is the listing market, if the IIV or index value applicable to an ETF is not disseminated as required, the Exchange may halt trading during the day in which the interruption occurs. If the interruption continues, then the Exchange will halt trading no later than the beginning of the next trading day. In addition, proposed NYSE Rule 1100(f)(2) sets forth trading halt

procedures when the Exchange trades the ETF pursuant to UTP. This proposed rule is substantially similar to that recently adopted by another exchange, NYSEArca.²⁸

In approving this proposal, the Commission relied on NYSE's representation that its surveillance procedures are adequate to properly monitor the trading of ICUs listed pursuant to the proposed new listing standards or traded pursuant to unlisted trading privileges. This approval is conditioned on the continuing accuracy of that representation.

Acceleration

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that NYSE's proposal is substantially similar to an Amex proposal that has been approved by the Commission.²⁹ The Commission does not believe that NYSE's proposal raises any novel regulatory issues and, therefore, that good cause exists for approving the filing before the conclusion of a notice-and-comment period. Accelerated approval of the proposal will expedite the listing and trading of additional ETFs by the Exchange, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Exchange Act,³⁰ to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,³¹ that the proposed rule change (SR–NYSE–2006–101), as amended, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³²

Nancy M. Morris,

Secretary.

[FR Doc. E7–956 Filed 1–23–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55120; File No. SR–NYSE–2006–110]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Relating to Its Linkage Order Fee

January 18, 2007.

On December 6, 2006, the New York Stock Exchange LLC (“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” or “Exchange Act”) ¹ and Rule 19b–4 thereunder,² a proposal to retroactively apply an increase in the fee (“Linkage Order Fee”) it charges its member organizations in connection with orders in equities executed in another market pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage (“Linkage Plan”). The proposal was published for comment in the **Federal Register** on December 15, 2006.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

The Exchange proposes to retroactively apply, as of December 1, 2006, an increase from \$0.00025 to \$0.000275 per share in the Linkage Order Fee it charges its member organizations in connection with orders in equities executed in another market pursuant to the Linkage Plan. This increase in the Linkage Order Fee became effective on Monday, December 4, 2006, pursuant to a previous rule change submitted by the Exchange.⁴ The Linkage Order Fee was increased to \$0.000275 to set it at the same level as the regular equity transaction fee, which was increased to that level as of December 1, 2006.⁵ The current filing simply applies the revised Linkage Order Fee to transactions that occurred on December 1, 2006, which is the only business day with respect to which the Linkage Order Fee and the regular equity transaction fee were not harmonized by the previous filing. The Exchange wishes to harmonize the Linkage Order Fee payable on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 54912 (December 11, 2006), 71 FR 75601.

⁴ See Securities Exchange Act Release No. 54911 (December 11, 2006), 71 FR 75603 (December 15, 2006) (notice of filing and immediate effectiveness of SR–NYSE–2006–108).

⁵ See Exchange Act Release No. 54856 (December 1, 2006); 71 FR 71215 (December 8, 2006) (SR–NYSE–2006–106).

²⁴ 15 U.S.C. 78k–1(a)(1)(C)(iii).

²⁵ See proposed Section 703.16(C)(3) of the Manual. If an index or portfolio value does not change for some of the time that the ETF trades on the Exchange, the last official calculated value must remain available throughout Exchange trading hours.

²⁶ See *id.*

²⁷ See proposed Section 703.16(A)(6) of the Manual.

²⁸ See Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006) (SR–NYSEArca–2006–77).

²⁹ See *supra* note 23.

³⁰ 15 U.S.C. 78s(b)(2).

³¹ *Id.*

³² 17 CFR 200.30–3(a)(12).

transactions executed through the Linkage on December 1, 2006, with the regular equity transaction fee payable on that day because the difference in the amount payable by customers would be immaterial, but the Exchange would incur significant costs in identifying those transactions which should be charged the lower fee rate.⁶

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 exchange⁷ and, in particular, the requirements of Section 6(b) of the Act⁸ and the rules and regulations thereunder. Specifically, the Commission finds that the proposal to retroactively apply the increase in the Linkage Order Fee is consistent with Section 6(b)(4) of the Act,⁹ which requires the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using Exchange facilities.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-NYSE-2006-110) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-974 Filed 1-23-07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55114; File No. SR-Phlx-2006-81]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Establishment of a Maximum Number of Quoting Participants Permitted in a Particular Option on the Exchange

January 17, 2007.

I. Introduction

On December 5, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 amend Phlx Rule 507, which governs the assignment of options to Streaming Quote Traders ("SQTs")³ and Remote Streaming Quote Traders ("RSQTs"),⁴ by adding commentary to the rule establishing a maximum number of quoting participants that may be assigned to a particular equity option at any one time. The proposed rule change was published for comment in the **Federal Register** on December 18, 2006.⁵ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The purpose of the proposed rule change is to enable the Exchange to manage its quotation traffic and bandwidth capacity by limiting the number of streaming quote market participants that may be assigned to a particular option at a given point in time. The proposed amendments to Phlx Rule 507 would establish: (i) A maximum number of quoters ("MNQ") in equity options based on each option's monthly trading volume; (ii) a process for recalculating the MNQ based upon changes in an option's monthly trading volume; (iii) an increase to the MNQ due to exceptional circumstances; (iv) the process by which the Exchange will notify market participants of changes to the MNQ; and (v) additional criteria relating to the process by which the Exchange will assign SQT and/or RSQT applicants in options in the event that

there are more applicants for assignment in a particular option than there are positions.

The Exchange proposes to limit the number of participants that may be assigned to a particular equity option at any one time based upon each option's monthly national volume. Proposed Commentary .02 to Phlx Rule 507 sets forth tiered MNQ levels providing for 20 participants for the top 5% most actively traded options; 15 participants for next 10% most actively traded options, and 10 market participants for all other options.⁶ The ranking is based upon the preceding month's national volumes. The MNQ would be recalculated within the first five days of each month based on the previous month's trading volume ("new MNQ"). The Exchange would inform market participants of changes to the MNQ via Exchange circular.

The Exchange's Options Allocation, Evaluation and Securities Committee ("OAESC")⁷ would be able to increase the MNQ in exceptional circumstances. Proposed Commentary .04 to Phlx Rule 507 describes the events that may be considered "exceptional," including substantial trading volume (whether actual or expected), a major news event, or corporate event. The Exchange would also be permitted to reduce the MNQ following the cessation of the exceptional circumstances, but would be required to follow the same procedures applicable for decreases to the MNQ due to a change in volume.⁸ When relying on this provision, the Exchange would submit a rule filing to the Commission pursuant to Section 19(b)(3)(A) of the Act.⁹

The Exchange is also proposing to amend Phlx Rule 507 by adding criteria for the OAESC to consider when determining whether to assign an option to a member in the situation where there are more applicants for assignment in a particular option than there are positions available. Specifically, proposed paragraph (b)(iii) of Phlx Rule 507 would require the OAESC to consider: (i) The financial and technical resources available to the applicant; (ii)

⁶ The Exchange estimates that the difference in the amount of Linkage Order Fees payable under the old rate as compared to the proposed revised rate by customers for trades executed on December 1, 2006, would be less than \$2,000.00. Telephone conversation between John Carey, Assistant General Counsel, NYSE, and Nathan Saunders, Special Counsel, Division of Market Regulation, Commission, December 7, 2006.

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ Id.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Phlx Rule 1014(b)(ii)(A).

⁴ See Phlx Rule 1014(b)(ii)(B).

⁵ See Securities Exchange Act Release No. 54914 (December 11, 2006), 71 FR 75798.

⁶ The Exchange may increase the MNQ levels by submitting to the Commission a rule filing pursuant to Section 19(b)(3)(A) of the Act and may decrease the MNQ levels upon Commission approval of a rule filing submitted pursuant to 19(b)(2) of the Act. See proposed Commentary .05 to Phlx Rule 507.

⁷ See Phlx By-Law Article X, Section 10-7. The OAESC has jurisdiction over, among other things: The appointment of specialists on the options and foreign currency options trading floors; allocation, retention and transfer of privileges to deal in options on the trading floors; and administration of the 500 series of Phlx rules.

⁸ See proposed Commentary .03 to Phlx Rule 507.

⁹ 15 U.S.C. 78s(b)(3)(A).