

sending rather than the delivery of the official statement.

As a result, the Board published in the August Notice a draft amendment to Rule G-32 that provided that, in the situation where the official statement is being amended or otherwise changed, a dealer may sell, pursuant to a periodic plan, a municipal fund security to a customer who has previously received the official statement so long as it sends to the customer a copy of any new, supplemented, amended or stickered official statement by first class mail promptly upon receipt from the issuer (*i.e.*, actual delivery by settlement would not be required). This draft amendment was designed to address the limited circumstances where an amendment to the official statement for a municipal fund security has just been produced but, because of standing arrangements with a customer under a periodic plan, a transaction in such security will automatically be effected and the securities delivered before the dealer is able to deliver the amended official statement to the customer, as would otherwise be required under the rule.

Fidelity suggests that this draft amendment to Rule G-32 be made to apply equally to periodic plans and non-periodic programs.<sup>133</sup> The Board believes that, although the problem that was intended to be addressed by the draft amendment would most likely arise under a periodic plan, such problems also may arise from time to time with respect to non-periodic programs. In addition, Merrill states that, in the case of an amendment to an official statement, dealers should be permitted to satisfy the delivery requirement under Rule G-32 with respect to the amended official statement by delivering the amendment alone (including a notice that the complete official statement is available upon request).<sup>134</sup> The Board understands that this is a typical practice in connection with amendments to mutual fund prospectuses. Although the Board believes that Rule G-32 currently would permit delivery of the amendment alone so long as the customer already has the official statement that is being amended and the dealer ensures that the amendment makes clear what constitutes the complete official statement as amended, the Board has determined that clarifying language consistent with Merrill's comment should be added to Rule G-32. as a result, the Board has made further

revisions to Rule G-32 to effect both of these suggested changes.

Finally, Eckert implies that requiring dealers selling municipal fund securities to comply with the official statement delivery requirements of Rules G-32 and G-36 may not conform Section 15B(d)(2)<sup>135</sup> of the Act.<sup>136</sup> Except for the technical changes to Rule G-32 included in the proposed rule change, the provisions of Rules G-32 and G-36 apply to dealers effecting transactions in municipal fund securities in a manner identical to dealer transactions in other forms of municipal securities. The Board believes that its authority to require the delivery of official statements by dealers in the manner provided in these rules has long since been settled.

#### 8. Rule G-33, on Calculations

The Board did not propose amendment Rule G-33 in the March Notice. Schulte states that this rule should be revised to eliminate references to par value, yield dollar price, maturity date and interest for purposes of municipal fund securities.<sup>137</sup> By its terms, Rule G-33 applies only to municipal securities that bear interest or are sold at a discount. Because municipal fund securities do not bear interest and are not sold at a discount, Rule G-33 would by its nature not apply. Therefore, no change has been made to Rule G-33.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

<sup>135</sup> 15 U.S.C. 78o-4(d)(2).

<sup>136</sup> See Eckert Letter. Section 15B(d)(2) of the Act provides that the Board is not authorized to require any issuer, directly or indirectly, to furnish to the Board or a customer any document or information with respect to such issuer; provided that the Board may require dealers to furnish to the Board or customers such documents or information which is generally available from a source other than the issuer.

<sup>137</sup> See Schulte Letter.

arguments concerning the foregoing, including whether the proposed rule change 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 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 in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Board. All submissions should refer to the File No. SR-MSRB-00-06 and should be submitted by August 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>138</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43075; File No. SR-NYSE-00-20]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Listing Fees for Closed-End Funds

July 26, 2000.

#### I. Introduction

On May 3, 2000 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change. The proposed rule change was published for comment in the **Federal Register** on June 23, 2000.<sup>3</sup> The Commission did not receive any comment letters with respect to the

<sup>138</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 34-42948 (June 15, 2000), 65 FR 39216.

<sup>133</sup> See First Fidelity Letter.

<sup>134</sup> See Second Merrill Letter.

proposal. This order approves the Exchange's proposal.

## II. Description of the Proposal

### 1. Purpose

The proposed rule change amends the listed company fee schedule, set forth in Paragraph 902.02 of the Listed Company Manual ("Manual"), as it applies to original listing fees. The Exchange seeks to adopt a minimum original listing fee for each new closed-end fund depending upon the number of shares offered. As proposed, closed-end funds would be subject to a minimum original listing fee based upon the number of shares outstanding as follows: up to 10 million shares—\$100,000; up to 24 million shares—\$125,000; and over 24 million shares—\$150,000. This minimum would include the Exchange's one-time special charge of \$36,800.

The Exchange recently received approval for a minimum fee that specifically excluded closed-end funds in anticipation of this filing because such funds, unlike corporations, do not issue additional shares of securities.<sup>4</sup> Thus, the Exchange felt it would be inappropriate to apply the same fee schedule applied to corporations to closed-end funds.

## III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>5</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Commission believes that the Exchange's proposal to establish the minimum original listing fee schedule for closed-end funds described above is not unreasonable to the Exchange's issuers. Also, the Commission believes that because the fees are proportional to the number of shares outstanding, these fees are equitably allocated among the issuers. Thus, the Commission finds that the

proposed rule change is consistent with the Act.

## IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NYSE-00-20) is approved.

By the Commission, for the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43070; File No. SR-Phlx-00-69]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Modifying the Concentration Requirements for the Gold/Silver Index

July 25, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19-b thereunder,<sup>2</sup> notice is hereby given that on July 18, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

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

The Phlx proposes to adopt Rule 1009A(b)(6)(i) as a maintenance standard that establishes a concentration requirement for the Gold/Silver Index ("Index"). The rule is stated below. Additions to the rule are in italics.

\* \* \* \* \*

#### Rule 1009A. Designation of the Index

- (a) No change
- (b) No change.
- (1)-(5) No change.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

(6) No single component security represents more than 25% of the weight of the index, and the five highest weighted components do not in aggregate account for more than 50% (60% 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 8,000 contracts on the Monday following expiration of the farthest-out, then trading, non-LEAP series.*

(c) No change.

In the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards set forth herein, the Exchange shall not open for trading any additional series of options of that class unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Commission under section 19(b)(2) of the Exchange Act.

\* \* \* \* \*

#### 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

The proposed rule change would amend the concentration requirements of the maintenance standards for the Gold/Silver Index to provide the same concentration requirements as are adopted for the Computer Box Maker Index.<sup>3</sup> The Gold/Silver Index is a capitalization weighted index composed of the stocks of widely held U.S. companies that mine gold and silver. Options on the Index have an American style expiration and the settlement value is based on the closing values of the component stocks on the day

<sup>3</sup> See Securities Exchange Act Release No. 39895 (April 21, 1998), 63 FR 23327 (April 28, 1998).

<sup>4</sup> See Securities Exchange Act Release No. 42606 (March 31, 2000), 65 FR 18415 (April 7, 2000) (SR-NYSE-00-10).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(4).