

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43694; File No. SR-NYSE-00-56]

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

December 8, 2000.

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> notice is hereby given that on December 7, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III 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.

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

The Exchange proposes to adopt a specific transaction fee schedule to apply to investment company units listed under Section 703.16 of the Exchange's Listed Company Manual. The text of the proposed rule change is available upon request from the Office of the Secretary, the NYSE or the Commission.

#### 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 IV 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange anticipates that it will shortly list investment company units (more generally known as an exchange

traded fund or ETF) based on the S&P Global 100 Index. The Exchange expects to list additional ETFs thereafter. Given that it is the practice in the industry to charge relatively nominal listing fees for ETFs, it is important for the Exchange to realize revenue from transaction fees on ETFs to support its entry into this market. Accordingly, the Exchange will impose a specific transaction fee schedule on ETFs, as follows:

On-Floor proprietary transactions (specialist and other)—\$0.63 per 100 shares, capped at \$300 per trade.

Off-Floor transactions (customer and broker/dealer)—\$0.60 per 100 shares, capped at \$100 per trade.

In addition, it should be noted that the Exchange's transaction charge exemption for system orders, currently covering orders up to 2,099 shares, will be extended to orders up to 5,099 shares in ETFs.

The NYSE Constitution provides that transaction fees on stocks and bonds will not exceed 2% of a member firm's commissions.<sup>3</sup> ETFs are a unique form of derivative security and therefore not subject to this Constitutional limitation. This is consistent with treatment afforded to standardized options when they were listed on the Exchange, and to other unique products such as the Exchange Stock Portfolios, a basket trading mechanism offered approximately a decade ago.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>5</sup> in particular, in that it provides 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 believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

<sup>3</sup> The NYSE reconfirmed its Board's discretion under Article X, Section 4 of the NYSE Constitution to impose transaction fees on its members. Telephone conversation between James Duffy, Senior Vice President and Deputy General Counsel, NYSE, and Deborah Flynn, Senior Special Counsel, Division of Market Regulation, Commission, December 7, 2000.

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

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

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members of other interested parties.

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and Rule 19b-4(e) thereunder.<sup>7</sup> At any time within 60 days of the filing of the proposed rule change, 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 purpose of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and 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 such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-00-56 and should be submitted by January 5, 2001.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(e).

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

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

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43690; File No. SR-Phlx-00-90]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Listing and Trading of Basket Linked Notes

December 7, 2000.

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> notice is hereby given that on October 16, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On November 27, 2000, Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons, and to grant accelerated approval to the proposed rule change, as amended.

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

The Phlx proposes to amend its rules to permit the listing and trading, or the trading pursuant to unlisted trading privileges, of Basket Linked Notes ("BLNs"), hybrid instruments whose values are linked to the performance of two or more highly capitalized, actively traded equity securities. New Section (k) of Rule 803 would provide listing standards for BLNs. Below is the text of the proposed rule change. Proposed new language is *italicized*.

\* \* \* \* \*

#### Philadelphia Stock Exchange, Inc. Criteria for Listing—Tier 1

Rule 803. Unchanged.

(a)–(j) Unchanged.

(k) *Basket Linked Notes ("BLNs").*

*Income instruments which are linked, in whole or in part, to the market performance of more than one common stock or non-convertible preferred stock will be considered for listing provided:*

(1) *Both the issue and the issuer of such security meet the criteria established in Rule 803(f) and the issue has a minimum term of one year.*

(2) *The issuer of such security will be expected to have a minimum tangible net worth in excess of \$250,000,000, and to otherwise substantially exceed the earnings requirement set forth in Rule 803(a). In the alternative, the issuer will be expected: (i) to have a minimum tangible net worth of \$150,000,000 and to otherwise substantially exceed the earnings requirements set forth in Rule 803(a), and (ii) not to have issued such securities where the original issue price of all the issuer's other equity and basket linked note offerings (combined with equity and basket linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.*

(3) *Each underlying linked stock either: (i) has a minimum market capitalization of \$3 billion and during the 12 months preceding listing is shown to have traded at least 2.5 million shares, (ii) has a minimum market capitalization of \$1.5 billion and during the 12 months preceding listing is shown to have traded at least 10 million shares; or (iii) has a minimum market capitalization of \$500 million and during the 12 months preceding listing is shown to have traded at least 15 million shares.*

(4) *Each issuer of an underlying stock to which the instrument is to be linked shall be a 1934 Act reporting company which is listed on a national securities exchange or is traded through the facilities of a national securities system and is subject to last sale reporting. In addition, if any underlying security to which the instrument is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as sponsored American Depository Shares ("ADS"), ordinary shares or otherwise, then for each such security the Exchange shall either: (i) have in place a comprehensive surveillance sharing agreement with the primary exchange on which each non-U.S. security is traded, (in the case of an ADS, the primary exchange on which the security*

*underlying the ADS is traded); or (ii) the combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market or in markets with which the Exchange has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADS) at least 50% of the combined worldwide trading volume in each non-U.S. security, other related non-U.S. securities, and other classes of common stock related to each non-U.S. security over the six month period preceding the date of listing; or (iii)(a) the combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in each non-U.S. security and in other related non-U.S. securities over the six month period preceding the date of selection of the non-U.S. security for a BLN listing, (b) the average daily trading volume for each non-U.S. security in the U.S. markets over the six months preceding the selection of each non-U.S. security for a BLN listing is 100,000 or more shares, and (c) the trading volume is at least 60,000 shares per day in the U.S. markets on a majority of the trading days for the six months preceding the date of selection of each non-U.S. security for a BLN listing.*

(5) *Each underlying linked stock to which the instrument relates may not exceed 5% of the total outstanding common shares of such entity, provided however, if any underlying linked stock is a non-U.S. security represented by ADSs, common shares, or otherwise, then for each such linked security the instrument may not exceed: (i) 2% of the total shares outstanding worldwide provided at least 20% of the worldwide trading volume in each non-U.S. security and related security during the six month period preceding the date of listing occurs in the U.S. market; (ii) 3% of the total worldwide shares outstanding provided at least 50% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six month period preceding the date of listing occurs in the U.S. market; and (iii) 5% of the total shares outstanding worldwide provided at least 70% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six month period preceding the date of listing occurs in the U.S. market. If any non-U.S. security and related securities has less than 20% of the worldwide trading volume occurring in the U.S. market during the six month period*

<sup>8</sup> 17 CFR 200.30-2(a)(12).

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

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

<sup>3</sup> In Amendment No. 1, Phlx amended the text and description of the proposed rule change to require a one-year minimum term for the securities described herein. See letter from Carla Behnfeldt, Director, New Product Development Group, Legal Department, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 21, 2000.