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

NYSE requested that the Commission find good cause for approving the proposal to accommodate the listing of the Units by December 18, 2003, the expiration date of the exchange offer pursuant to which the Units are being offered. The Commission, however, does not find good cause to accelerate approval of this proposal.

Within 35 days of the date of 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 self-regulatory organization 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 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 20549–0699. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR–NYSE–2003–40. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Exchange. All submissions should refer to the File No. SR–NYSE–2003–40 and should be submitted by January 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.13

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03–31262 Filed 12–18–03; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend for an Additional Six Months Its Pilot Program Permitting a Floor Broker To Use an Exchange Authorized and Provided Portable Telephone on the Exchange Floor


Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),1 and Rule 19b–4 thereunder,2 notice is hereby given that on November 24, 2003, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“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 extend its pilot program that amends NYSE Rule 36 (Communication Between Exchange and Members’ Offices) governs the establishment of telephone or electronic communications between the Exchange’s Trading Floor and any other location. Prior to the Pilot, NYSE Rule 36.20 prohibited the use of portable telephone communications between the Trading Floor and any off-Floor location, and the only way that voice communication could be conducted by Floor brokers


2See Original Order, supra note 3.

between the Trading Floor and an off-
Floor location was by means of a
telephone located at a broker’s booth.
These communications often involved a
customer calling a broker at the booth for
“market look” information. Prior to the
Pilot, a broker could not use a
portable phone in a trading crowd at the
point of sale to speak with a person
located off the Floor.
The Exchange is proposing to extend
the Pilot for an additional six months,
expiring on June 16, 2004. The Pilot
would amend NYSE Rule 36 to permit
a Floor broker to use an Exchange
authorized and issued portable
telephone on the Floor. Thus, with the
approval of the Exchange, a Floor broker
would be permitted to engage in direct
voice communication from the point of
sale to an off-Floor location, such as a
member firm’s trading desk or the office
of one of the broker’s customers. Such
communications would permit the broker
to accept orders consistent with
Exchange rules, provide status and oral
execution reports as to orders
previously received, as well as “market
look” observations as have historically
been routinely transmitted from a
broker’s booth location. Use of a
portable telephone on the Exchange
Floor other than as authorized and issued
by the Exchange would continue to
be prohibited.
Furthermore, both incoming and
outgoing calls would continue to be
allowed, provided the requirements of
all other Exchange rules have been met.
A broker would not be permitted to
represent and execute any order
received as a result of such voice
communication unless the order was
first properly recorded by the member
and entered into the Exchange’s Front
End Systemic Capture (“FESC”)
electronic database.6 In addition, Exchange rules require that any
Floor broker receiving orders from the public
over portable phones must be properly
qualified to do direct access business
under Exchange Rules 342 and 345,
among others.7 Furthermore, since the
Exchange currently permits portable
communications at the point of sale for
orders in Investment Company Units (as
defined in Section 703.16 of the Listed
Company Manual), also known as
Exchange-Traded Funds (“ETFs”),8 and the
Pilot would allow for the use of
portable phones for orders in ETFs, orders in ETFs would also be subject to
the same FESC requirements as orders
in any other security listed on the
Exchange.
As noted above, under the policy
prior to the Pilot, an off-Floor customer
could communicate with a broker in a
trading crowd only in an indirect way
by calling a broker’s booth and using the
booth clerk as an intermediary. The
Exchange believes that the extension
of the Pilot would enable the Exchange
to provide more direct, efficient access to
its trading crowds and customers,
increase the speed of transmittal of
orders and the execution of trades, and
provide an enhanced level of service to
customers in an increasingly
competitive environment. By enabling
customers to speak directly to a Floor
broker in a trading crowd on an
Exchange authorized and issued
portable telephone, the Exchange
believes that the proposed rule change
would expedite and make more direct
the free flow of information, which,
prior to the Pilot, had to be transmitted
somewhat more circuitously via the
broker’s booth.
The Exchange also notes that
specialists are subject to separate
restrictions in NYSE Rule 36 on their
ability to engage in voice
communications from the specialist post
to an off-Floor location.9
The amendment to NYSE Rule 36 would
not apply to specialists, who would
continue to be prohibited from speaking
from the post to upstairs trading desks
or customers.

Pilot Program Results
Since the Pilot’s inception, the
Exchange represents that there have
been approximately 800 portable phone
subscribers. In addition, with regard to
portable phone usage, for a sample week
of July 28, 2003 through August 1, 2003,
an average of 19,611 calls per day were
originated from portable phones, and an
average of 3218 calls per day were
received on portable phones. Of the
calls originated from portable phones,
an average of 18,116 calls per day were
internal calls to the booth, and 1495
calls per day were external calls. Thus,
over 90% of the calls that originated
from portable phones were internal calls
to the booth. With regard to received
calls, of the 3218 average calls per day
received, an average of 1351 calls per
day were external calls, and an average of
1867 calls per day were internal calls
received from the booth. Thus,
approximately 58% of all received calls
were internally generated, and 42%
calls were from the outside.

Therefore, the Exchange believes
that the Pilot appears to be successful in that
there is a reasonable degree of usage of
portable phones, but as noted above,
there have been no regulatory,
administrative, or other technical
problems associated with their usage.
The Exchange believes that the Pilot
appears to facilitate communication on the
Floor without any corresponding
drawbacks. Accordingly, the Exchange
believes it is appropriate to extend
the Pilot for an additional six months,

2. Statutory Basis
The Exchange believes that the
proposed rule change is consistent with
section 6(b)(5) of the Act10 in general, and
furthers the objectives of section 6(b)(5)
of the Act11 in particular, in that it is
designed to promote just and equitable
principles of trade, to remove
impediments to and perfect the
mechanism of a free and open market
and a national market system, and, in
general, to protect investors and the
public interest. The Exchange believes
that the amendment to NYSE Rule 36
would support the mechanism of free
and open markets by providing for
increased means by which
communications to and from the Floor
of the Exchange may take place.

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7 See also Securities Exchange Act Release No. 44943 (October 16, 2001), 66 FR 53520 (October 24, 2001) [SR–NYSE–2001–39] (discussing certain exceptions to FESC, such as
orders to offset an error, or a bona fide arbitrage.
8 For more information regarding Exchange requirements for conducting a public business on the Exchange Floor, see Information Memos 01–41
Board Options Exchange, Inc.’s existing policy and
rules governing the use of telephones at equity
option trading posts by allowing for the receipt of
orders over outside telephone lines, from any
source, directly at equity trading posts), and
Exchange, Inc.’s proposal to remove current
prohibitions against Floor Brokers’ use of cellular
or cordless phones to make calls to persons located
off of the trading floor.
specialists’ communications from the post).
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 proposed rule change (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 from the date of filing, or such
shorter time as the Commission may
designate if consistent with the
protection of investors and the public
interest, and the Exchange provided the
Commission with written notice of its
intention to file the proposed rule change
at least five days prior to the filing date,
the proposed rule change has become
operative pursuant to section 19(b)(3)(A)
of the Act,13 and subparagraph (f)(6)
of Rule 19b–4 thereunder.14 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 purposes of the
Act.

The Exchange requests that the
Commission waive the 30-day delayed
operative date of Rule 19b–4(f)(6)(iii).15
The Exchange believes that waiver of
this period will allow the current Pilot
to continue, without interruption, the
existing operation of its Pilot for an additional six months,

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.

Comments may also be submitted
electronically at the following e-mail
address: rule-comments@SEC.gov. All
comment letters should refer to File No.
SR–NYSE–2003–38. This file number
should be included on the subject line
if e-mail is used.

For the Commission, by the Division of
Market Regulation, pursuant to delegated
authority.19

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03–31263 Filed 12–18–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION


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


Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),1 and Rule 19b–4 thereunder,2 notice is hereby given that on November 21, 2003, 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, II, and III, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to