

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-NASD-2007-056), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56654; File No. SR-NYSE-2007-67]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Relating to NYSE Rule 2 (“Member,” “Membership,” “Member Firm,” etc.)

October 12, 2007.

I. Introduction

On July 24, 2007, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to reflect changes in the Exchange’s membership requirements as a result of the consolidation of the member firm regulatory functions of the National Association of Securities Dealers, Inc. (“NASD”) and NYSE Regulation, Inc. (“NYSE Regulation”), which resulted in a combined self-regulatory organization called Financial Industry Regulatory Authority, Inc. (“FINRA”).³ The proposed rule change was published for comment in the *Federal Register* on August 7, 2007.⁴ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

In connection with the recently approved plan to consolidate the

member regulation operations of NASD and the NYSE Regulation into a single organization (“Transaction”),⁵ NYSE proposes to require all organizations that currently are NYSE member organizations but are not NASD members (“NYSE-only member organizations”), or are organizations that propose to become NYSE member organizations, to also be members of FINRA. The Exchange notes that most NYSE member organizations are already also members of FINRA. According to the Exchange, there are approximately 95 NYSE member organizations that are not currently FINRA members and that will be required to become FINRA members in order to remain NYSE member organizations and to utilize a NYSE trading license.⁶ FINRA would become the designated examining authority (“DEA”) for all NYSE member organizations.⁷

The Exchange proposes to amend the definition of “member organization” in NYSE Rule 2(b) to provide that membership in FINRA is a condition to becoming a member organization of NYSE. NYSE intends to keep NYSE Rule 308 (Acceptability Proceedings) in order to retain for itself the discretion to deem an applicant unacceptable for NYSE membership.

NYSE-only member organizations would have a 60-day grace period within which they must apply for and be approved for FINRA membership. This grace period would run from the later of the date of Commission approval of either this proposed rule change or NASD’s proposed rule change to amend its membership rules to permit eligible NYSE-only member organizations to become FINRA members through an expedited process.⁸

⁵ On July 26, 2007, the Commission approved amendments to NASD’s By-Laws to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (“Release No. 34-56145”). The date of closing of the Transaction was July 30, 2007.

⁶ NYSE also has allowed an organization to be an NYSE “regulation only” member without purchasing a trading license, if the organization qualifies and subjects itself to NYSE regulatory jurisdiction. After the Transaction, NYSE will continue to provide this status to an organization that is or becomes a FINRA member and subjects itself to NYSE jurisdiction, even though the organization does not have a NYSE trading license.

⁷ Historically, NYSE was the DEA for virtually all of its member organizations. As part of the Transaction, it is contemplated that the Commission will name FINRA as the DEA for all the organizations for which NYSE was the DEA.

⁸ NASD filed a companion proposal, which the Commission approved today, that specifies the terms on which eligible NYSE-only member organizations can become FINRA members on an expedited basis. Pursuant to that proposal, NASD

III. Discussion and Commission Findings

After careful consideration, 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 exchange⁹ and, in particular, the requirements of Section 6 of the Act.¹⁰ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, 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 Commission notes that most NYSE member organizations are also members of FINRA. Thus, the proposed rule change will primarily affect approximately 95 NYSE-only member organizations, in addition to those organizations that propose to become NYSE member organizations.

The Commission believes that the proposed rule change would further the consolidation of the member firm regulation functions of NASD and NYSE Regulation, as approved by the Commission.¹² The Commission notes that the approximately 95 NYSE-only member organizations that must become FINRA members will be able to avail themselves of the expedited FINRA membership procedures and the waiver of certain FINRA registration and application fees.¹³ Further, the Commission believes that the 60-day grace period for eligible NYSE-only

would adopt Interpretive Material 1013-1 (“IM-1013-1”), which establishes a membership waiver in process for eligible NYSE-only member organizations, and Interpretive Material Section 4(b)(1) and 4(e) to Schedule A of the By-Laws, which exempts the applicants from the fee for each initial Form U-4 for the registration of any representative or principal associated with the firm at the time it submits its application for FINRA membership pursuant to IM-1013-1 and from the FINRA membership application fee. See Securities Exchange Act Release No. 56653 (SR-NASD-2007-056) (“Release No. 34-56653”).

⁹ In approving this proposed rule change, as amended, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

¹² See Release No. 34-56145, *supra* note 5.

¹³ See Release No. 34-56653, *supra* note 8.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD’s Certificate of Incorporation to reflect its name change to FINRA in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007).

⁴ See Securities Exchange Act Release No. 56173 (July 31, 2007), 72 FR 44205 (“Notice”).

member organizations to become FINRA members is reasonable.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (File No. SR-NYSE-2007-67), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56651; File No. SR-Phlx-2007-71]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Eliminate Position and Exercise Limits on Russell 2000® Index Options

October 12, 2007.

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 September 21, 2007, 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 substantially prepared by the Exchange. On September 27, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as modified by Amendment No. 1, and approves the proposal on an accelerated basis.

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

The Exchange proposes to amend its Rule 1079 (FLEX Index and Equity Options)³ and Rule 1001A (Position

Limits) to specify that full-value options on the Russell 2000® Index (“RUT”) and one tenth (1/10th) value options on the Russell 2000® Index (“RMN”) shall have no position limits, and that reduced-value or mini-size contracts shall be aggregated with full-value or full-size contracts and counted by the amount by which they equal a full-value contract. The text of the proposed rule change is available at Phlx, the Commission’s Public Reference Room, and <http://www.phlx.com>.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Phlx Rules 1079 and 1001A to eliminate the position limits on RUT options and RMN options, which are multiply-listed and heavily traded options on the broad-based Russell 2000® Index.⁴ The purpose of the proposed rule change is also to clarify that reduced-value or mini-size options contracts shall be aggregated with full-value or full-size options contracts and shall be counted by the amount by which they equal a full-value contract.

The current position limits for RUT options of 50,000 contracts, with no more than 30,000 of such contracts in a series in the nearest expiration month, and 500,000 contracts for RMN options, with 300,000 contracts in the nearest expiration month, were established when the Commission approved the rule change that provided for the listing and trading of RUT and RMN options on the Exchange, and have remained unchanged.⁵ These limits are similar to

the position limits established on other exchanges trading options on the Russell 2000® Index, which have recently received Commission approval to eliminate position limits on these options.⁶

The Exchange believes that the circumstances and considerations relevant to the Commission approving the elimination of position and exercise limits for other heavily traded broad-based index options (e.g., options on the Standard & Poor’s 500 Index (“SPX”), the Standard & Poor’s 100 Index (“OEX”), the Dow Jones Industrial Average Index (“DJX”), and the Nasdaq-100 Index (“NDX”)) equally apply to the current proposal relating to RUT and RMN position limits.⁷ In approving the elimination of position limits for SPX, OEX, DJX, and NDX options, the Commission considered that the enormous capitalization of each of these indexes and the deep and liquid markets for the securities underlying each index significantly reduced concerns of market manipulation or disruption in the underlying markets. The Commission also noted the active trading volume for options on these respective indexes.

Phlx believes that RUT shares common factors with the SPX, OEX, DJX, and NDX. As of the date of this filing, the approximate market capitalizations of the SPX, OEX, DJX, and NDX were \$13.95 trillion, \$8.06 trillion, \$4.4 trillion and \$2.36 trillion, respectively; the average daily trading volume (“ADTV”) for all underlying components of the indexes were 1.27 billion, 540 million, 240 million, and 400 million shares, respectively; and the ADTV for options on the indexes were 610,000 contracts, 60,000 contracts, 34,000 contracts, and 58,000 contracts respectively.⁸ Phlx believes that RUT has very comparable characteristics. The market capitalization for RUT is approximately \$1.73 trillion dollars, the

⁶ See Securities Exchange Act Release Nos. 56351 (September 4, 2007), 72 FR 51875 (September 11, 2007) (SR-Amex-2007-81); and 56350 (September 4, 2007), 72 FR 51878 (September 11, 2007) (SR-CBOE-2007-79) (collectively, “RUT Approval Orders”).

⁷ See Securities Exchange Act Release Nos. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (SR-CBOE-2001-22) (elimination of position and exercise limits on SPX, OEX, and DJX options) (“SPX, OEX, and DJX Position Limit Elimination Approval Order”); and 52650 (October 21, 2005), 70 FR 62147 (October 28, 2005) (SR-CBOE-2005-41) (elimination of position and exercise limits on NDX options) (“NDX Position Limit Elimination Approval Order”). The Exchange also notes that there are no position and exercise limits for the Chicago Board Options Exchange, Incorporated (“CBOE”) volatility index options based on SPX, DJX, and NDX.

⁸ ADTVs are calculated over the previous three months of trading.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Flexible Exchange Options (“FLEX options”) are customized equity or index option contracts made available by Phlx and other option exchanges that allow certain terms of the option to be specified, such as the underlying security, the type of the option, the exercise price, the expiration date, and the exercise style. See Phlx Rule 1079.

⁴ As result of the rule changes proposed herein, RUT options and RMN options would likewise have no exercise limits. See Phlx Rules 1079(e) and 1002A.

⁵ See Securities Exchange Act Release No. 55305 (February 15, 2007), 72 FR 8240 (February 23, 2007) (SR-Phlx-2006-65).