Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish strike-price intervals for options on Index-Linked Securities and to establish trading hours for these products. The proposed rule change was published for comment in the **Federal Register** on March 22, 2010.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposed Rule Change

Prior to the commencement of trading options on Index-Linked Securities (also known as exchange-traded notes ("ETN")), Phlx has proposed to establish strike price intervals and trading hours for these new products. The Commission has approved the Phlx's and other options exchanges proposals to enable the listing and trading of options on Index-Linked Securities.[4]

$1 Strikes for ILS (ETN) Options

Phlx's proposal would extend the trading conventions applicable to options on exchange-traded funds ("ETFs") to options on Index-Linked Securities. Specifically, under the proposed rule change, strike price intervals of $1 will be permitted where the strike price is less than $200. Where the strike price is greater than $200, $5 strikes will be permitted. These proposed changes are reflected by the addition of Commentary .05(a)(v) to Rule 1012.

In support of its proposal, Phlx stated that it believes the marketplace and investors will be expecting ETN options to trade in a similar manner to options on ETFs. Strike prices for ETF options are permitted in $1 or greater intervals where the strike price is $200 or less and $5 or greater where the strike price is greater than $200.[5] Accordingly, the Exchange asserts that the rationale for permitting $1 strikes for ETF options equally applies to permitting $1 strikes for ETN options and that investors will be better served if $1 strike price intervals are available for ETN options (where the strike price is less than $200).

Phlx further stated that it has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes (where the strike price is less than $200) for ETN options.

Trading Hours for ILS (ETN) Options

Similar to the trading hours for ETF options, the Exchange proposes to amend Supplementary Material .01 to Rule 101 to provide that options on exchange-traded notes including Index-Linked Securities may be traded on the Exchange until 4:15 p.m. each business day.

III. Discussion and Commission's Findings

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 exchange.[6] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange be 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 Commission notes that the proposed strike price intervals for options on Index-Linked Securities are consistent with the strike price intervals currently permitted for options on ETFs. Accordingly, the proposal should provide consistency and predictability for investors who may view these products as serving similar investment functions in the marketplace to ETFs and may provide investors with greater flexibility in achieving their investment objectives.

In addition, the Commission notes that Phlx has represented that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes for options on Index-Linked Securities.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[8] for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register.** The Commission notes that it recently approved the same changes to strike price intervals and trading hours for options on Index-Linked Securities for another exchange.[9] The Commission also notes that it has not received any comments regarding this proposal. The Commission believes that the proposed changes to strike price intervals and trading hours for options on Index-Linked Securities do not raise any novel regulatory issues and accelerating approval of this proposal should benefit investors by creating consistency and predictability for investors who may view these products as serving similar investment functions in the marketplace to ETFs and greater flexibility in achieving their investment objectives.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–2010–40) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–9551 Filed 4–23–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61942; File No. SR–NYSEArca–2010–26]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Its Fee Schedule

April 20, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 9, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61695 (March 12, 2010), 75 FR 13614.

[4] *See e.g.,* Securities Exchange Act Release Nos. 58571 (September 17, 2008), 73 FR 55188 (September 24, 2008) (SR–Phlx–2008–60); 59923 (May 14, 2009), 74 FR 23902 (May 21, 2009) (SR–NASDAQ–2009–046); 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (approving SR–CBOE–2008–64); 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (approving SR–NYSEArca–2008–57); 58985 (November 10, 2008), 73 FR 72538 (November 28, 2008) (approving SR–ISE–2008–86).

[5] *See* Securities Exchange Act Release No. 60872 (October 23, 2009), 74 FR 55878 (October 29, 2009) (SR–OCC–2009–14) (approval order).

[6] 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).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Securities Exchange Act Release No. 61696 (March 12, 2010), 75 FR 13174 (March 18, 2010) (SR–CBOE–2010–005).

[10] 15 U.S.C. 78s(b)(1).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 amend its Schedule of Fees and Charges for Exchange Services (the "Schedule"). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on April 12, 2010. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, on the Commission's Web site at *http://www.sec.gov* and at the Commission's Public Reference Room.

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 self-regulatory organization 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 those 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 parts 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 Exchange is proposing to modify its fees structure for securities that execute at prices below $1. Recently, on April 1, 2010, the Exchange increased its charges from 0.1% (10 basis points) to 0.3% (30 basis points) of the total dollar value of the execution for these securities for ETP Holders accessing liquidity. Also on April 1, 2010, the Exchange instituted a credit to ETP Holders providing liquidity in these securities of 0.25% (25 basis points) of the total dollar value of the transaction. By this proposal, the Exchange seeks to revert to its pricing prior to these changes and thereby (i) reduce its fee for accessing liquidity in these securities from 0.3% (30 basis points) to 0.1% (10 basis points) and (ii) provide no credit to ETP Holders providing liquidity. These fees are consistent with the limitations of Regulation NMS, SEC Rule 610(c), for securities with a price of less than $1.00.

The Exchange believes the proposed fees are reasonable and equitable in that they apply uniformly to all similarly situated ETP Holders. The proposed changes will become operative on April 12, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[4] in general, and Section 6(b)(4) of the Act,[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed changes to the Schedule are reasonable and equitable in that they apply uniformly to all similarly situated ETP Holders.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

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.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–26. This 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–26 and should be submitted on or before May 17, 2010.

[8] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–9550 Filed 4–23–10; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2007–0022]

Denial of Airlines' Temporary Exemption Requests from DOT's Tarmac Delay Rules for JFK, EWR, LGA and PHL Operations

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: On March 30, 2010, the Department published a notice in the **Federal Register** seeking comment on separate requests by five airlines for a temporary exemption from a requirement that U.S. carriers adopt contingency plans for lengthy tarmac delays. These plans must include an assurance that a carrier will not permit an aircraft to remain on the tarmac for more than three hours in the case of domestic flights and for more than a set number of hours as determined by a carrier in the case of international flights without providing passengers an opportunity to deplane, with certain exceptions for safety, security, or Air Traffic Control (ATC) related reasons. The requests cover operations at John F. Kennedy International Airport (JFK), Newark Liberty International Airport (EWR), LaGuardia Airport (LGA), and Philadelphia International Airport (PHL). The carriers contend that without the requested exemption covering seven months in 2010 during which runway construction is expected to be underway at JFK, large numbers of flights will have to be canceled at the New York area airports and affected passengers will face significant inconveniences and delays before being re-accommodated. The Department received approximately 135 comments on these exemption requests, primarily from individual consumers. After fully considering the comments submitted, the Department is issuing this notice to announce its decision denying each of these exemption requests as not being in the public interest since the concerns raised by the carriers can be resolved through more careful flight scheduling. The notice also points out that if totally unexpected situations occur appropriate prosecutorial discretion can be applied with respect to potential enforcement action.

FOR FURTHER INFORMATION CONTACT: Livaughn Chapman or Blane A. Workie, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; 202–366–9342 (phone), 202–366–7152 (fax), *livaughn.chapman@dot.gov* or *blane.workie@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background

On December 30, 2009, the Department published a final rule titled "Enhancing Airline Passenger Protections" that sets forth numerous measures geared toward strengthening protections afforded to air travelers. 74 FR 68983. One of these provisions, which takes effect April 29, 2010, requires U.S. certificated and commuter air carriers that operate scheduled passenger service or public charter service using any aircraft with a design capacity of 30 or more passenger seats to adopt, implement, and adhere to contingency plans for lengthy tarmac delays at each large and medium hub U.S. airport at which they operate scheduled or public charter air service. For domestic flights, the rule requires covered U.S. carriers to provide assurance that they will not permit an aircraft to remain on the tarmac for more than three hours, with two safety/security and an ATC-related exceptions: (1) Where the pilot-in-command determines that an aircraft cannot leave its position on the tarmac to deplane passengers due to a safety-related or security-related reason (*e.g.* weather, a directive from an appropriate government agency); and (2) where ATC advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations. For international flights departing from or arriving at a U.S. airport, the rule requires covered U.S. carriers to provide assurance that the carriers will not permit an aircraft to remain on the tarmac for more than a set number of hours, as determined by the carriers, before deplaning passengers, with the same safety, security, and ATC exceptions. 14 CFR §§ 259.4(b)(1) and (b)(2). For all flights, carriers must provide adequate food and water no later than two hours after the aircraft leaves the gate (in the case of a departure) or touches down (in the case of an arrival) if the aircraft remains on the tarmac, unless the pilot-in-command determines that safety or security requirements preclude such service. Carriers must also ensure that lavatory facilities are operable and medical attention is provided if needed while the aircraft remains on the tarmac. Pursuant to 49 U.S.C. 46301, violations of 14 CFR Part 259 subject a carrier to civil penalties of up to $27,500 per violation.

On March 4, 2010, JetBlue requested an exemption from the requirements not to permit an aircraft to remain on the tarmac for more than three hours in the case of domestic flights and for more than a set number of hours as determined by a carrier in the case of international flights without providing passengers an opportunity to deplane for its JFK operations for the time period that operations at JFK are disrupted by the closure of the main runway at that airport, i.e., March 1 through December 1, 2010. JetBlue's request for an exemption during this period was followed by a similar request by Delta Air Lines for its JFK operations and a request by American Airlines that the Department grant an exemption for all carrier operations at JFK. Continental next requested that the Department extend any relief it grants carriers operating at JFK to carriers operating at the Newark and LaGuardia Airports. On March 22, 2010, US Airways also filed a request for a similar exemption for its operations at the Philadelphia Airport.

The carriers argue collectively that without the requested exemptions large numbers of flights will have to be canceled at the New York area airports and affected passengers will have to face significant inconveniences and delays before being re-accommodated. The basic rationale presented by Continental and US Airways in support of exemptions for their operations at Newark, LaGuardia and Philadelphia airports is that the delays and delay mitigation strategies at JFK resulting from the runway construction will affect the former airports by causing delays to spill over.

On March 30, 2010, the Department published a notice in the **Federal Register** seeking comment on whether it should act on the requests by JetBlue, Delta, American, Continental, and US Airways by means of one of the following four measures: (1) Deny each exemption request; (2) grant one or more of the exemption requests in their entirety; (3) grant a limited temporary exemption for operations at one or more of the airports by allowing the three hour limit to be raised to four hours during the two specific heavy construction periods (April 29 thru June 30, 2010, and September 16 thru