

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44306; File No. SR-NYSE-2001-10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Its Allocation Policy Relating to Exchange-Traded Funds Traded on an Unlisted Trading Privileges Basis

May 15, 2001.

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 May 14, 2001, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") 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 NYSE. The proposed rule change has been filed by the NYSE as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.³ 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 NYSE proposes to amend its Allocation Policy ("Policy")⁴ for allocating Exchange-Traded Funds ("ETFs") traded on an unlisted trading privileges ("UTP") basis to specify that specialist units may appear before the special committee responsible for allocating ETFs.

Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed deletions are in brackets.

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Policy for Allocation of Exchange-Traded Funds Admitted to Trading on the Exchange on an Unlisted Trading Privileges Basis

Exchange-traded funds ("ETFs") (as defined in paragraph 703.16 of the Listed Company Manual) admitted to trading on the Exchange on an unlisted trading privileges basis shall be allocated pursuant to this Policy rather than the Exchange's policy for

allocating securities to be listed on the Exchange.

ETFs shall be allocated by a special committee consisting of the Chairman of the Allocation Committee, the three most senior Floor broker members of the Allocation Committee, and four members of the Exchange's senior management as designated by the Chairman of the Exchange. This committee shall solicit allocation applications from interested specialist units, and shall review the same performance and disciplinary material with respect to specialist unit applicants as would be reviewed by the Allocation Committee in allocating listed stocks. The committee shall reach its decisions by majority vote with any tie votes being decided by the Chairman of the Exchange. Specialist unit applicants [shall not] *may* appear before the committee.

Special Criteria

In their allocation applications, specialist units must demonstrate:

- (a) An understanding of the trading characteristics of ETFs;
- (b) Expertise in the trading of derivatively-priced instruments;
- (c) Ability and willingness to engage in hedging activity as appropriate;
- (d) Knowledge of other markets in which the ETF to be allocated trades;
- (e) Willingness to provide financial and other support to Exchange marketing and educational initiatives with respect to the ETF to be allocated.

Allocation Freeze Policy

The Allocation Freeze Policy as stated in the Allocation Policy for listed stocks shall apply.

Prohibition on Functioning as Specialist in ETF and Specialist in any Component Security of the ETF

No specialist member organization may apply to be allocated an ETF if it is registered as specialist in any security which is a component of the ETF. A specialist member organization which is registered as specialist in a component stock of an ETF may establish a separate member organization which may apply to be the specialist in an ETF. The approved persons of such ETF specialist member organization must obtain an exemption from specified specialist rules pursuant to Rule 98.

If, subsequent to an ETF being allocated to a specialist member organization, a security in which the specialist member organization is registered as specialist becomes a component security of such ETF the specialist organization must (1) withdraw its registration as specialist in the security which is a component of the ETF; (ii) withdraw its registration as specialist in the ETF; or (iii) establish a separate specialist member organization, which will be registered as specialist in the ETF and whose approved persons have received an exemption from specified specialist rules pursuant to Rule 98.

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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 NYSE 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 NYSE 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

According to the Exchange, the intent of its current Policy is: (1) To ensure that the allocation process is based on fairness and consistency and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by specialist units; (3) to provide the best possible match between specialist unit and security; and (4) to contribute to the strength of the specialist system.

The Exchange recently modified its conventional allocation process to provide that ETFs traded on a UTP basis be allocated by a special committee, and to establish special criteria to be considered by the special committee.⁵

This current Policy for ETFs trading on a UTP basis states that specialist units shall not appear before the special committee. The Exchange proposes to amend its Policy to specify that specialist units *may* meet with the special committee. The Exchange has determined that due to the unique aspects of certain ETF products, it may be helpful for the special committee to meet with the interview specialist units before making an allocation decision.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act⁶ in general, and furthers the objectives of section 6(b)(5) of the Act⁷ in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

⁵ See note 4 *supra*.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ The NYSE recently amended its Policy to provide special procedures and to establish a new allocation committee for ETFs. The Commission accelerated approval of these amendments on a pilot basis through May 7, 2002. See Securities Exchange Act Release No. 44272 (May 7, 2001) (File No. SR-NYSE-2001-07).

general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary 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 either solicited or received.

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

Because the foregoing 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, the proposed rule change has become effective pursuant to section 19(b)(3)(A)⁸ of the Act and Rule 19b-4(f)(6)⁹ thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE seeks to have the proposed rule change become operative immediately to allow it to begin the process of selecting specialists to enable ETFs to trade on a UTP basis.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately as of May 15, 2001, because the proposed amendment to the NYSE's Policy effects a minor change with respect to the allocation of ETF's listed and traded on the Exchange on a UTP basis.¹¹ The Commission notes that

the NYSE's Policy regarding ETFs traded on a UTP basis was approved on a pilot basis.¹² Thus, the instant proposed rule change is operative as of May 15, 2001 through May 7, 2002. 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.

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-2001-10 and should be submitted by June 11, 2001.

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

Jonathan G. Katz,

Secretary.

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DEPARTMENT OF STATE

[Public Notice 3673]

Bureau of Educational and Cultural Affairs Request for Grant Proposals (ECA/PE/C/CU-01-64): Creative Arts Exchange Programs for Africa, East Asia and the Pacific, and Central Asia

SUMMARY: The Cultural Programs Division of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for assistance awards for international Creative Arts Exchanges. Public and private U.S. non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to conduct programs for Cultural Tourism in Africa; Performing Arts Presenters in East Asia and the Pacific; or Protecting Cultural Heritage: Film And Documentary Archives In Central Asia.

Program Information

Overview: The Bureau of Educational and Cultural Affairs (ECA) invites applicants to submit proposals that promote the institutional capacity, professional expertise and economic viability of arts institutions and cultural entities in Africa, East Asia and the Pacific, and Central Asia. Programs supported by the Creative Arts Exchanges grants should create or expand ongoing institutional partnerships, and offer experiential learning activities, and share methods and materials that will enhance the development of their cultural institutions and management skills. This program is not academic in nature; programs should be designed to provide practical, hands-on experience.

Guidelines: The proposal should anticipate a grant period that will begin no earlier than September 1, 2001.

Competitive proposals usually have the following characteristics: (1) An active, existing partnership between a U.S. organization and the foreign partner institution(s), or strong potential to develop a sustainable, productive partnership; (2) a proven successful track record for conducting similar program activity; (3) experienced staff with knowledge of the region and local language(s) ability; (4) a clear and reasonable implementation plan and well-articulated expected outcomes; (5) a two-way exchange; and (6) concrete ideas for possible follow-on activities to take place after the funded grant period.

Proposals should reflect a practical understanding of the current cultural, political, economic and social environment that is relevant to the theme addressed in the proposal.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

¹¹ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² See note 4 *supra*.

¹³ 17 CFR 200.30-3(a)(12).