

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56452; File No. SR-NYSEArca-2007-89]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Amend Fees for the Entry of Good Till Cancelled or Good Till Date Orders

September 18, 2007.

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 August 28, 2007, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On September 18, 2007, NYSE Arca filed Amendment No. 1 to the proposed rule change. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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 the section of its Schedule of Fees and Charges for Exchange Services (the “Fee Schedule”) that applies to orders submitted by ETP Holders<sup>5</sup> identified with a time-in-force modifier of either Good Till Cancelled (“GTC”) or Good Till Date (“GTD”) (<sup>6</sup> either or both referred to herein as an “Open Order Modifier(s)”). The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's Office of the Secretary 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, NYSE Arca 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 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 proposes to amend relevant sections of its Fee Schedule that apply to orders submitted to the Exchange that are affixed with an Open Order Modifier. This filing intends to clarify the intentions of the Exchange regarding fees and credits applicable to such orders since the introduction of Open Order Modifiers,<sup>7</sup> and to conform the Fee Schedule to its billing practice.

NYSE Arca Equities did not intend to offer, nor has it offered, the credits normally afforded to orders that provide liquidity within its book. According to the amended Fee Schedule, a limit order affixed with an Open Order Modifier that executes within the same day on which it was entered<sup>8</sup> will be subject to and eligible for all charges and credits currently afforded to limit orders not affixed with an Open Order Modifier. However, such orders, or any unexecuted portion thereof, that remain eligible for execution beyond the initial trading day are not eligible for any credits (e.g., Liquidity Provider Credits) when subsequently executed.

The Exchange believes this filing to be consistent with its practices since the inception of the Open Order Modifiers, and with the information available to ETP Holders since their introduction.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act<sup>9</sup> in general and furthers the objectives of section 6(b)(4)<sup>10</sup> in particular in that it is intended to provide for the equitable allocation of

reasonable dues, fees, and other charges among its members and other persons using its facilities.

##### 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

Written comments on the proposed rule change were neither solicited nor received.

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

The foregoing proposed rule change is subject to section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>12</sup> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by a self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. 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.<sup>13</sup>

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2007-89 on the subject line.

<sup>7</sup> See Securities Exchange Act Release No. 53394 (March 1, 2006), 71 FR 11696 (March 8, 2006) (SR-PCX-2006-07).

<sup>8</sup> Limit orders affixed with an Open Order Modifier may be entered during any trading session, but are only eligible for execution during the Core Trading Session (9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

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

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

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

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

<sup>5</sup> See NYSE Arca Equities Rule 1.1(n) for definition of “ETP Holders.”

<sup>6</sup> See NYSE Arca Equities Rule 7.31(c)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on September 17, 2007, the date on which the NYSE Arca submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

### Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2007-89. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. 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-2007-89 and should be submitted on or before October 16, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56454; File No. SR-Phlx-2007-43]

#### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Elimination of Calculation Methodology From Generic Listing Standards

September 18, 2007.

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 June 15, 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 Phlx. On September 6, 2007, the Exchange submitted 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 proposed rule change as amended on an accelerated basis.

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

Phlx proposes to amend its existing Rule 803 (Criteria for Listing—Tier I) to eliminate the requirement that indexes underlying certain Trust Shares and Index Fund Shares (collectively, "ETFs" or "Exchange Traded Funds")<sup>3</sup> are calculated following a specific methodology.

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, Phlx 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. Phlx 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 Rule 803 (Criteria for Listing—Tier I) regarding Phlx's generic listing standards pursuant to Rule 19b-4(e) under the Act ("Rule 19b-4(e)")<sup>4</sup> for ETFs to eliminate the requirement that an underlying index be calculated following one of five specified methodologies.

The Exchange currently has generic listing standards which permit the listing and trading of various ETFs subject to the procedures contained in Rule 19b-4(e) (without the need to file a rule change for each security). By amending its generic listing standards, the Exchange intends to reduce the time frame for listing ETFs based on indexes that utilize methodologies not currently identified in the generic listing standards and thereby reduce the burdens on issuers and other market participants.

The generic listing standards for ETFs presently provide that their underlying indexes be calculated based on the market capitalization, modified market capitalization, price, equal-dollar, or modified equal-dollar weighting methodology.<sup>5</sup> The proposed rule change would eliminate this standard and, as a result, the Exchange would no longer consider index methodology in its review of an ETF's eligibility for listing and trading pursuant to Rule 19b-4(e).

The Exchange notes that, as the market for Trust Shares and Index Fund Shares in particular and exchange traded funds in general has grown and the relevant product lines have matured, there has been an increase in the number of methodologies used to calculate the underlying indexes. To accommodate this development, the Exchange proposes to eliminate any calculation methodology for the underlying index from generic listing standards, as has been done by other exchanges, including the American Stock Exchange LLC ("Amex").<sup>6</sup>

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

<sup>5</sup> See Phlx Rule 803(i)(11)(d) and (l)(6)(D) regarding Trust Shares and Index Fund Shares, respectively.

<sup>6</sup> See Securities Exchange Act Release No. 55544 (March 27, 2007), 72 FR 15923 (April 3, 2007) (SR-Amex-2007-07) (order approving the elimination from the Amex's generic listing standards for portfolio depositary receipts of the requirement that

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

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

<sup>3</sup> See definitions of Trust Shares and Index Fund Shares in Phlx Rules 803(i) and 803(l), respectively.

<sup>14</sup> 17 CFR 200.30-3(a)(12).