may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements. [3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC seeks to extend the temporary approval of Addendum O, which governs the application of Class A surveillance procedures and the additional collateralization requirements for settling members that engage in certain over-the-counter (''OTC'') market making activities. Addendum O is designed to decrease the risks associated with OTC market makers by use of Class A surveillance and special collateralization procedures. The Commission originally granted temporary approval on May 10, 1996, and has subsequently extended its approval through May 31, 2001. [4]

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [5] and the rules and regulations thereunder because the surveillance and additional collateralization procedures will facilitate the safeguarding of securities and funds which are in its custody or control or for which it is responsible and in general will protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] For a complete discussion of NSCC's Class A surveillance procedures and collateralization requirements refer to Securities Exchange Act Release Nos. 37202 (May 10, 1996), 61 FR 24993 [File No. SR–NSCC–95–17]; 38622 (May 19, 1997), 62 FR 27285 [File No. SR–NSCC–97–04]; 40034 (May 27, 1998), 63 FR 30277 [File No. SR–NSCC–98–03]; 41478 (June 4, 1999), 64 FR 31664 [File No. SR–NSCC–99–06]; and 42864 (May 30, 2000), 65 FR 36204 [File No. SR–NSCC–99–09] (Commission approval date corrected in **Federal Register,** 65 FR 42065).

[5] 15 U.S.C. 78q–1.

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

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and generally to protect investors and the public interest.[6] As the Commission previously stated, it finds that NSCC's proposed rule change is consistent with these obligations under the Act because it should help NSCC protect itself, its members, and investors from members that pose an increased risk because of their involvement in OTC market making.[7]

Under the proposal, NSCC will continue to have the authority with respect to members which participate in OTC market making activities or clear for correspondents that engage in such activity to (1) place such members on Class A surveillance, (2) requires such members to post additional collateral with NSCC, and (3) calculate an alternative clearing fund requirement for such members when additional risk factors are present. Collectively, the higher level of surveillance, the additional level of collateralization, and the alternative clearing fund requirements should help ameliorate NSCC's exposure, which in turn should assist NSCC in fulfilling its obligations under the Act to safeguard securities and funds for which it has control or is responsible and to protect investors and the public interest.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause because accelerated approval will allow NSCC to continue to utilize its Class A surveillance procedures, the interim collateralization policy, and the alternative clearing fund formula without interruption when the previous temporary approval expires on June 1, 2001, and until NSCC's proposed rule change, SR–NSCC–2001–04, is completely phased in.

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 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–2001–05 and should be submitted by June 5, 2001.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–NSCC–2001–05) be and hereby is approved through December 31, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–12138 Filed 5–14–01; 8:45 am]

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[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] *Supra* note 4.

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

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44272; File No. SR–NYSE–2001–07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Provide for an Allocation Policy for Exchange-Traded Funds Trading on an Unlisted Trading Privileges Basis

May 7, 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 April 25, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 7, 2001, the NYSE field

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

[2] 17 CFR 240.19b–4.

Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and, for the reasons discussed below, the Commission is granting accelerated approval to the proposed rule change, as amended, on a pilot basis.

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

NYSE proposes to amend its Allocation Policy and Procedures (''Policy)[4] to provide for the allocation of exchange-traded funds (''ETFs'') listed and traded on the Exchange pursuant to unlisted trading privileges (''UTP'').

Below is the text of the proposed rule change. Proposed new language is *italicized.*

* * * * *

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 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 component security of such ETF, the specialist organization must (i) 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.

* * * * *

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

As part of its overall business strategy, the Exchange believes that it is appropriate to trade ETFs on the NYSE Floor. In December 2000, the Exchange began trading an ETF on the S&S Global 100 (symbol IOO).[5] The Exchange intends to trade additional ETFs listed by other ETF sponsors.

The Exchange believes it would be appropriate to trade on the NYSE, on a UTP basis, certain other ETFs currently listed and trading on other markets. These ETFs may include the NASDAQ 100 Trust (symbol QQQ), Standard and Poor's Depository Receipts (symbol SPY) and the DOW Industrials DIAMONDS (symbol DIA).

It should be noted that UTP ETFs will trade at a post separate from ay other type of security trading on the Exchange.

Allocation Policy for ETFs Trading Pursuant to UTP. The intent of the Exchange's 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 Allocation Committee has sole responsibility for the allocation of securities to specialist units under this Policy pursuant to authority delegated by the Board of Directors, and is overseen by the Quality of Markets Committee of the Board. The Allocation Committee renders decisions based on the allocation criteria specified in this Policy.

The Exchange believes that it would be appropriate to modify the conventional allocation process to provide that ETFs traded on a UTP basis be allocated by a special committee, consisting of the Chairman of the Allocation Committee, the three most senior floor broker members of the

[3] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sapna Patel, Attorney, Division of Market Regulation, Commission, dated May 4, 2001 (''Amendment No. 1''). In Amendment No. 1, the NYSE made a minor technical change to the proposed rule text clarifying that an approved person of a separate specialist organization must have received an exemption from specified specialists rules pursuant to NYSE Rule 98.

[4] NYSE's current Policy was amended in Securities Exchange Act Release No. 42746 (May 2, 2000), 65 FR 30171 (May 10, 2001) (File No. SR–NYSE–99–34). *See* Exhibit A to File No. SR–NYSE–99–34 for a copy of NYSE's Policy.

[5] *See* Securities Exchange Act Release No. 43658 (December 1, 2000), 65 FR 77408 (December 11, 2000) (notice of filing and order granting accelerated approval to File No. SR–NYSE–00–53).

Allocation Committee, and four members of the Exchange's senior management as designated by the Chairman of the Exchange. This will permit Exchange management, acting with key members of the Allocation Committee, to oversee directly the introduction of the UTP concept to the NYSE.

Allocation applications would be solicited by the Exchange and this special committee would review the same performance and disciplinary material as is reviewed by the Allocation Committee.[6] In addition, specialist unit applicants would be required to 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 which is to be allocated trades;
(e) Willingness to provide financial and other support to relevant Exchange publicity and educational initiatives.

The special committee would review specialist unit applications and reach its allocation decision by majority vote. Any tie vote would be decided by the Chairman of the Exchange. Specialist units would not appear before the special committee.

Restriction on a Specialist Member Organization Acting as a Specialist in the ETF and in a Component Security of the ETF. Under the proposed rule change, specialist member organization cannot be both the specialist in the ETF and the specialist in any security that is a component of the ETF. This restriction is necessary to avoid the possibility of ''wash sales'' in a situation where the specialist in the ETF needs to hedge by buying or selling component stocks of the ETF, and could inadvertently be trading with a proprietary bid or offer made by a specialist in the same member organization who is making a market in the component security. A specialist member organization registered in a component security of the ETF may use a separate affiliated member organization to function as the ETF specialist, and thereby avoid the ''wash sale'' issue. The affiliated member organization that acts as the ETF specialist would be required to establish information barriers between itself and the specialist member organization, pursuant to NYSE Rule 98.[7]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, because 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.

More specifically, the Exchange believes that trading ETFs on a UTP basis will provide investors with increased flexibility in satisfying their investment needs because they will be able to purchase and sell a security that replicates the performance of a broad portfolio of stocks at negotiated prices throughout the business day.

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 the 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. 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–2001–07 and should be submitted by June 5, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[10] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 6(b)(5)[11] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Specialists play a crucial role in providing stability, liquidity, and continuity to the trading of securities. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules thereunder, is the maintenance of fair and orderly markets in their designated securities.[12] To ensure that specialists fulfill these obligations, it is important that the Exchange develop and maintain stock allocation procedures and policies that provide specialists with an initiative to strive for optimal performance. The Exchange now proposes to amend its Policy to account for the allocation of ETFs listed and traded on the Exchange on a UTP basis.

The Commission notes that the Exchange proposes to establish a special committee to allocate ETFs listed and traded on a UTP basis. The special committee will consist 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

[6] *See* Section IV, Allocation Criteria, of the Policy. *See supra* note 4.

[7] With respect to ETFs, NYSE has proposed to amend its Rule 98 information barriers to eliminate the requirement that approved persons of specialist member organizations be capitalized separately from the specialist member organization. However, a specialist member organization that is registered only in ETFs will remain subject to the minimum capital requirements as specified in Exchange Rules. In addition, NYSE has proposed to amend NYSE Rules 36, 105(1), 111, 13, 104.21, as well as the NYSE's Market-On-Close/Limit-At-The-Close and Pre-Opening Price Indications Policies to accommodate the trading of ETFs on a UTP basis. *See* File No. SR–NYSE–2–001–08, filed by the NYSE with the Commission on April 25, 2001.

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

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b). In approving this proposal on an accelerated basis, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* 17 CFR 240.11b–1; NYSE Rule 104.

Chairman of the Exchange. The Exchange believes that this will permit its management, acting with key members of the Allocation Committee, to oversee directly the introduction of the UTP concept to the NYSE. The Commission believes that it is appropriate to establish a new allocation committee for ETFs because of the unique characteristics of ETFs, which should be considered in the allocation process.

The Exchange proposes that member organizations applying to trade ETFs on a UTP basis be able to demonstrate certain abilities in addition to the current performance and disciplinary requirements of the allocation application. For example, the applicant must have: (a) an understanding of the trading characteristics of ETFs; (b) expertise in the trading of derivatively-priced instruments; (c) the ability and willingness to engage in hedging activity as appropriate; (d) the knowledge of other markets in which the ETF which is to be allocated trades; and (e) the willingness to provide financial and other support to relevant Exchange publicity and educational initiatives. The Commission finds that these criteria are suitable for the Committee to rely on when allocating an ETF to a particular specialist unit.

In addition, the Exchange proposes to prohibit a specialist in any component security of the ETF to function as a specialist in the ETF in order to avoid ''wash sales.'' The Exchange, however, proposes to allow specialists in a component security of an ETF to use a separate member organization to function as an ETF specialist so long as NYSE Rule 98 information barriers are established and approved by the Exchange. The Commission believes that NYSE Rule 98 information barriers should prevent the flow of any privileged and/or nonpublic information between the related entities and should reduce the potential for any concerns regarding ''wash sales'' in this context.

Because the proposed rule change, as amended, institutes a new process for allocating ETFs to NYSE specialist units and because the Commission is adopting the proposal on an accelerated basis, the Commission believes that the proposal should be approved on a pilot basis, for a one-year period ending on May 7, 2002, to ensure that the process is effective and fair. The Commission expects the NYSE to report to the Commission about its experience with the new allocation process in any future proposal it files to extend the amendment to the Policy or approve it on a permanent basis.

The Commission, pursuant to Section 19(b)(2) of the Act,[13] finds good cause for approving the proposed rule change and Amendment No. 1 thereto, on a one-year pilot basis through May 7, 2002, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Commission notes that granting accelerated approval to this proposal will allow the NYSE to immediately implement a process for allocating ETFs to be traded on the Exchange on a UTP basis to specialist units. It is necessary to allocate the ETFs to specialist units as soon as possible so that the specialists so appointed will have ample time to prepare for NYSE's upcoming listing and trading of ETFs on a UTP basis. Amendment No. 1 simply makes minor technical corrections to the proposed rule text and clarifies that approved persons of a specialist must be granted an exemption from specified specialist rules pursuant to NYSE Rule 98.

V. Conclusion

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–2001–07), as amended, is hereby approved on an accelerated basis through May 7, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–12137 Filed 5–14–01; 8:45 am]

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[13] 15 U.S.C. 78s(b)(2).

[14] *Id.*

[15] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44285; File No. SR–Phlx–2001–02]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Codifying Formal Procedures for Members To Submit Proposals To List Option Classes on the Exchange

May 9, 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 January 11, 2001, 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 Phlx filed amendment Nos. 1[3] and 2[4] to the proposed rule change on February 21, 2001 and May 2, 2001, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Phlx proposes to amend Exchange Rule 1009 to codify and implement procedures to be carried out when an Exchange member, member organization, or other person requests that the Exchange list options not currently traded on the Exchange. The proposed rule change is set forth below. New text is in italics.

* * * * *

Criteria for Underlying Securities

Rule 1009. (a)–(c) No change.

Commentary

.01 No change

.02 *(a) Members, member organizations or any person proposing to list any option not currently listed on the Exchange shall submit a form of request (a ''Request to List an Option''), available from the Exchange's Business and Operations Planning Department (BOP), to BOP staff.*

(b) As soon as practicable, but not later than three (3) business days following receipt of the Request to List an Option, BOP staff shall review the proposed option's eligibility for listing, using the objective listing criteria set forth in Commentary .01 of this Rule. If BOP staff determines that the proposed option does not meet the objective

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard Rudolph, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 20, 2001 (''Amendment No. 1''). Among other things, Amendment No. 1 clarifies that the Exchange: (i) may consider bona fide business interests in determining whether to list an option; (ii) must send letters to members setting forth in reasonable detail the basis on which a decision not to list a proposed option was made; and (iii) must forward its written response within 3 business days of its determination to deny a proposed listing.

[4] *See* letter from Richard Rudolph, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated May 1, 2001 (''Amendment No. 2''). Amendment No. 2 revises Section (c)(ii) of proposed Commentary .02 to Phlx Rule 1009 to clarify that the Exchange must notify the member in writing if the Exchange determines not to list, or to place conditions or limitations upon, a proposed listing. Amendment No. 2 also amends Section (e) of proposed Commentary .02 to clarify that the Exchange will maintain a record of any bona fide business interests supporting a decision not to list, or to place conditions or limitations upon, a proposed listing.