

regarding the proposal. This order approves the proposed rule changes.

## II. Description of the Proposal

NYSE Arca Equities Rule 2.16 currently provides that all Equity Trading Permit ("ETP") Holders<sup>4</sup> must file their formation documents with the Corporation. The Exchange proposes to amend NYSE Arca Equities Rule 2.16 in order to provide that only those ETP Holders for which the Exchange is the Designated Examining Authority must submit such formation documents to the Corporation.

NYSE Arca Equities Rule 4.5(b) currently requires ETP Holders that carry or clear accounts for customers to file two manually signed copies of Part II of SEC Form X-17A-5 with the Corporation on a quarterly basis. The Exchange proposes to amend NYSE Arca Equities Rule 4.5(b) to provide that such reports shall be filed electronically with the Corporation, rather than manually, and that the ETP Holder shall maintain original copies of such reports with manual signatures in accordance with NYSE Arca Equities Rule 2.24.<sup>5</sup>

NYSE Arca Equities Rule 4.5(c) currently requires ETP Holders that do not carry or clear accounts for customers to file two manually signed copies of Part IIA of SEC Form X-17A-5 with the Corporation on a quarterly basis. The Exchange proposes to amend NYSE Arca Equities Rule 4.5(c) to provide that such reports shall be filed electronically with the Corporation, rather than manually, and that the ETP Holder shall maintain original copies of such reports with manual signatures in accordance with NYSE Arca Equities Rule 2.24.<sup>6</sup>

Finally, the Exchange proposes to amend paragraphs (b) and (c) of NYSE Arca Equities Rule 4.5 to codify procedural changes that have been implemented by the Exchange and to be consistent with guidance that has been provided previously to ETP Holders.

## III. Discussion

After careful review and based on the Exchange's representations, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations applicable to a national

securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5)<sup>8</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes it is reasonable and consistent with the Act for the Exchange to amend NYSE Arca Equities Rules 2.16 and 4.5(b) and (c) in order to simplify the administrative procedures that ETP Holders must follow, given the fact that the Exchange believes that such amendments will not compromise the Exchange's ability to regulate its ETP Holders.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSEArca-2006-82), as amended, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57122; File No. SR-NYSEArca-2008-02]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Fees and Charges

January 10, 2008.

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 January 3, 2008, NYSE Arca, Inc. ("NYSE Arca" 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 substantially by the Exchange. NYSE Arca has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal 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

NYSE Arca is proposing to amend the existing Schedule of Fees and Charges for Exchange Services ("Schedule") to remove the fee reference associated with a pilot program that offered a monthly cap on the Firm Facilitation Fee. The pilot program expired on December 31, 2007. The text of the proposed rule change is available at <http://www.nyse.com>, the principal offices of the Exchange, and 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 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 IV below. NYSE Arca 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 its Schedule to reflect the termination of a pilot program under which OTP Firms are eligible for a monthly cap of \$50,000 on Firm Facilitation Fees ("Pilot").

The Pilot was established as part of SR-NYSEArca-2007-93<sup>5</sup> and was in

<sup>4</sup> See NYSE Arca Equities Rule 1.1(n).

<sup>5</sup> NYSE Arca Equities Rule 2.24 provides that each ETP Holder must make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Securities Exchange Act of 1934 (the "Exchange Act") and the rules and regulations thereunder (including any interpretation relating thereto) as though such ETP Holders were brokers or dealers registered with the SEC pursuant to Section 15 of the Exchange Act.

<sup>6</sup> *Id.*

<sup>7</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<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)(ii).

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

<sup>5</sup> See Securities Exchange Act Release No. 56595 (October 1, 2007) 72 FR 57372 (October 9, 2007) (SR-NYSEArca-2007-93). In addition to the establishment of the Pilot Program capping monthly fees, SR-NYSEArca-2007-93 proposed other

effect through December 31, 2007. By offering a monthly cap of the Firm Facilitation Fee, the Exchange hoped to garner additional order flow from market participants that were attracted to the competitive fee structure. The Exchange offered this fee cap on a limited pilot basis in order to measure its effectiveness and then make a determination whether to adopt it on a permanent basis.

After analyzing the effectiveness of the fee cap during the Pilot, the Exchange determined that the Pilot did not meet its stated objectives, and therefore the Exchange did not extend the program. The program expired on December 31, 2007. The Exchange now plans to revise the Schedule to remove the reference to the Pilot Program.

## 2. Statutory Basis

The Exchange believes the proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

### *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*

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission

changes related to the Firm Facilitation Fee. This filing serves only to amend the Schedule by removing the reference to the fee cap, and proposes no other changes to the application of the Firm Facilitation Fee.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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. 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-2008-02 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEArca-2008-02. 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 the Exchange. 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 publicly available. All submissions should refer to File Number SR-NYSEArca-2008-02 and

should be submitted on or before February 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57134; File No. SR-Phlx-2005-68]

### **Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Deletion of Rule 702, Carrying Accounts**

January 11, 2008.

## I. Introduction

On November 9, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and 19b-4 thereunder,<sup>2</sup> a proposal to delete Phlx Rule 702, regarding Carrying Accounts. Phlx filed Amendment No. 1 to the proposed rule change on January 18, 2007. Notice of the proposal, as amended, was published for comment in the **Federal Register** on February 14, 2007.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

## II. Description of the Proposal

The purpose of the proposed rule change to delete Rule 702, Carrying Accounts, is to eliminate an unnecessary and confusing Exchange rule. Currently, Rule 702 provides that "[n]o member, doing business as an individual, shall carry accounts for customers, except as provided in Rule 903."<sup>4</sup>

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Exchange Act Release No. 55256 (Feb. 8, 2007), 72 FR 7106 (Feb. 14, 2007).

<sup>4</sup> The reference to Rule 903 is clearly an incorrect reference which should be to Rule 904, Use of a Partnership Name, which provides that "[n]o member shall conduct business under a partnership firm name unless he has at least one general partner, provided, however, that if by death or otherwise a member becomes the sole general partner in a member organization that is a partnership he may continue business under the