

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54480; File No. SR-NYSE-2006-72)

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change, As Amended, Relating to Exchange to Exchange Billing Under the Linkage Plan

September 21, 2006

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 August 25, 2006, the New York Stock Exchange LLC (“NYSE” 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 prepared by the Exchange. On September 7, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and is approving the proposal, as amended, on an accelerated basis.

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

The Exchange proposes to permit the Exchange to bill directly, and to accept direct billing from, other participants in the proposed “Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934” (“Linkage Plan”) that are unable to implement Sponsoring Member billing, as described herein, on October 1, 2006.

This proposal does not require changes to the Exchange’s rule text.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240. 19b-4.

³ See Amendment No. 1 which replaced the original filing in its entirety.

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 III below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.⁴

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

1. Purpose

On July 17, 2006, the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the Chicago Stock Exchange, Inc., The NASDAQ Stock Market LLC, the National Stock Exchange, the New York Stock Exchange LLC, and the NYSE Arca, Inc., executed and filed with the Commission the Linkage Plan. The Philadelphia Stock Exchange, Inc. ("Phlx") subsequently executed the Linkage Plan on August 1, 2006.⁵ The Linkage Plan was filed with the Commission pursuant to Rule 608 of Regulation NMS under the Act.⁶ The purpose of the proposed Linkage Plan is to enable the Linkage Plan participants to act jointly in planning, developing, operating and regulating the NMS Linkage System ("Linkage") that will electronically link the Linkage Plan Participant Markets to one

⁴ The staff has made minor changes to the Exchange's summaries pursuant to the telephone conversation between Karen Lorentz, Managing Director, Competitive Analysis, NYSE, and Nataliya Cowen, Special Counsel, Division of Market Regulation, Commission, on September 15, 2006.

⁵ See Securities Exchange Act Release No. 54239 (July 28, 2006); 71 FR 44328 (August 4, 2006). A Linkage Plan, dated August 1, 2006, reflecting Phlx's inclusion as a Linkage Plan participant, was sent to the Commission on August 8, 2006.

⁶ 17 CFR 242.608.

another, as described in the Linkage Plan. The Linkage Plan participants have requested that the Commission approve the Linkage Plan by October 1, 2006. The Plan would run concurrently with the ITS Plan from October 1, 2006 until February 5, 2007.⁷ The Linkage Plan by its terms ends on June 30, 2007; however, if the Linkage Plan participants wish to extend the term they could agree to do so, subject to Commission approval.⁸

The Linkage Plan provides that orders must be sent to a Participant Market through the auspices of a member of that Participant Market (“Sponsoring Member”). An order entered through the Linkage must specify the member of the destination market (either clearing member or default Sponsoring Member). Pursuant to the Linkage Plan, each market should maintain within the facilities of the Securities Industry Automation Corporation (“SIAC”), the facilities manager for the Linkage, a database of default Sponsoring Members for after-hours processing and billing for orders sent to a market where the originating firm is not a member of the market to which the order is sent for execution.

Historically, ITS Plan Participants have not imposed transaction charges for executions of commitments delivered through ITS, although the ITS Plan does not prohibit such charges. Under the Linkage Plan, each participant would be accessed through its own members and could charge for orders executed in its market through the Linkage. The destination market would bill the clearing or Sponsoring Member for executions in that market, pursuant to that

⁷ The Linkage Plan participants have requested that the Commission grant appropriate exemptions from the ITS Plan to accommodate this result. See letter to Nancy Morris, Secretary, Commission, from Robert Hill, Chairman, ITS Operating Committee, dated September 18, 2006.

⁸ Upon implementation of Rule 611 on February 5, 2007, the ITS Plan Participants expect to have submitted an amendment to eliminate the ITS Plan.

market's transaction fee schedule,⁹ based on the monthly reports provided by SIAC.¹⁰ Certain markets, however, may be unable to supply clearing or Sponsoring Member information on orders routed through the Linkage to other markets by October 1, 2006. In this case, the Linkage Plan participants have agreed to bill each other directly, based on data supplied by SIAC.¹¹

Example: A member of a self-regulatory organization ("SRO") A that is not a member of SRO B sends an order through the Linkage to SRO B for execution. In routing the transaction through the Linkage, SRO A is unable to include Sponsoring Member information on the report. The transaction will be included in a monthly report provided to SRO B by SIAC (without identifying Sponsoring Member information), and SRO B may bill SRO A directly for the transaction in accordance with SRO B's transaction fee schedule applicable to the Linkage.

⁹ The NYSE will bill for such executions on the NYSE in accordance with the NYSE's current transaction fee schedule. See Securities Exchange Act Release No. 54142 (July 13, 2006), 71 FR 41493 (July 21, 2006) (SR-NYSE-2006-46).

¹⁰ Under the Linkage Plan, the member of the destination market would be identified by a unique clearing number. If the clearing number provided by the originating Participant Market does not identify a member of the destination market, SIAC will identify the default Sponsoring Member of the originating market at the destination market for the security in question and that Sponsoring Member's identification information will be included on the order to the destination market on all reports sent to the destination market, including any report for billing purposes. The member identified on the order will be responsible for any fees in the destination market. SIAC will provide to Participants a key to match the clearing number to the member's name.

¹¹ The National Association of Securities Dealers, Inc. ("NASD") is not a member of the Linkage Plan. In lieu of direct billing to or by the NASD, Linkage Plan participants expect to bill Alternative Display Facility ("ADF") market participants directly and would be directly billed by ADF market participants, based upon data supplied by SIAC.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, 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.

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

The Exchange believes that the proposed rule change will impose no 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 comments on this proposal.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-NYSE-2006-72 on the subject line.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

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-NYSE-2006-72. 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. Copies of such filing also will be available for inspection and copying at the principal offices of NYSE. 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-NYSE-2006-72 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.¹⁴ In particular, the Commission finds that the

¹⁴ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See U.S.C. 78c(f).

proposal, as amended, is consistent with the provisions of Section 6(b)(5),¹⁵ in that it is 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, 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 Linkage Plan, the purpose of which is to enable its participants to act jointly in planning, developing, operating and regulating the NMS Linkage System electronically linking the Linkage Plan Participant Markets to one another, is expected to become operative on October 1, 2006. The Linkage Plan provides for a mechanism for charging for orders executed in each Participant Market using the information about a clearing or Sponsoring Member. Certain markets have indicated that they may be unable to supply clearing or Sponsoring Member information on orders routed through the Linkage to other markets, thus under the proposed rule change, which the Commission understands will be adopted by each of the Linkage Plan participants, the participants have agreed to bill each other directly, based on data supplied by SIAC.

The Exchange has requested that the Commission approve the proposed rule change, as amended, on an accelerated basis. The Exchange notes that the Linkage Plan participants expect the Linkage Plan to become operative on October 1, 2006, and that accelerated approval would permit the Exchange to implement exchange to exchange billing procedures at the start of the Linkage Plan's operation, allowing Linkage Plan participants who do not have a Sponsoring

¹⁵ 15 U.S.C. 78f(b)(5).

Member at each destination market, to use the Linkage Plan and pay fees directly to the other Linkage Plan participant.¹⁶

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁷ for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the Federal Register. Granting accelerated approval would permit the Exchange to implement exchange to exchange billing procedures at the start of the Linkage Plan's operation enabling Linkage Plan participants who were not able to find a Sponsoring Member at each of the destination markets, to use the Linkage Plan and pay fees directly to another Linkage Plan participant.

Accordingly, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,¹⁸ to approve the proposed rule change, as amended, on an accelerated basis.

¹⁶ The Commission understands that each of the Linkage Plan participants will file a proposed rule change similar to this one. To date, the Amex and the Phlx have done so. See file nos. SR-Amex-2006-85 and SR-Phlx-2006-58.

¹⁷ See id.

¹⁸ See id.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change, as amended, (SR-NYSE-2006-72) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Nancy M. Morris
Secretary

¹⁹ See id.

²⁰ 17 CFR 200.30-3(a)(12).