

VI. Conclusion

The Commission believes that the proposal, as amended, should significantly assist the NYSE's efforts in fulfilling its regulatory responsibilities. The Commission further believes that the proposed rules meet the minimum requirements for an order audit trail system imposed by the Commission in the SEC Order, which required a time-sequenced record of orders and market-wide synchronization of all member firms' business clocks. In addition, OTS should provide a useful surveillance tool that will allow earlier detection of fraudulent activity for the benefit of investors and the public. Therefore, the Commission believes the approval of the proposed OTS, as amended, is appropriate and consistent with the requirements of the Act applicable to a national securities exchange, and in particular, with the requirements of section 6(b)(5) of the Act,²⁹ and the rules and regulations thereunder.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,³⁰ that the proposed rule change, as amended, (NYSE-99-51) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-10098 Filed 4-23-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47690; File No. SR-NYSE-2003-07]

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

April 17, 2003.

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 March 31, 2003, the New York Stock Exchange, Inc. ("NYSE" 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 self-

regulatory organization. The proposed rule change has been filed by the NYSE as a "non-controversial" rule change under Rule 19b-4(f)(6) of 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 seeks to extend the pilot program relating to the allocation policy for trading certain Exchange-Traded Funds ("ETFs"), for an additional year. The current pilot program is set to expire on May 8, 2003. For purposes of the allocation policy, ETFs include both Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual) and Trust Issued Receipts (as defined in Rule 1200), which trade on an Unlisted Trading Privileges ("UTP") basis. The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

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 self-regulatory organization 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

This proposed rule change was originally filed as a one-year pilot in SR-NYSE-2001-07⁴ and Amendment No. 1 thereto, and subsequently amended by SR-NYSE-2001-10⁵ and SR-NYSE-2002-07.⁶ The pilot was subsequently extended for another year and is due to expire on May 8, 2003.⁷

³ 17 CFR 240.19b-4(f)(6).

⁴ See Securities Exchange Act Release No. 44272 (May 7, 2001), 66 FR 26898 (May 15, 2001) (SR-NYSE-2001-07).

⁵ See Securities Exchange Act Release No. 44306 (May 15, 2001), 66 FR 28008 (May 21, 2001) (SR-NYSE-2001-10).

⁶ See Securities Exchange Act Release No. 45729 (April 10, 2002), 67 FR 18970 (April 17, 2002) (SR-NYSE-2002-07).

⁷ See Securities Exchange Act Release No. 45884 (May 6, 2002), 67 FR 32073 (May 13, 2002) (SR-NYSE-2002-17).

Therefore, the Exchange seeks to extend the pilot relating to the allocation policy for trading certain Exchange-Traded Funds, for an additional year.

Since the inception of the Allocation Policy, the Exchange states that 36 different ETFs have been allocated. This includes 17 Merrill Lynch Holding Company Depositary Receipts (HOLDERS), a type of Trust Issued Receipt, 9 different types of Select Sector SPDRs, 1 MidCap SPDR, 5 different types of iShares, 1 VIPER, the Nasdaq-100 Index Tracking Stock (symbol QQQ), the Standard & Poor's Depositary Receipts (symbol SPY), and The Dow Industrials DIAMONDS (symbol DIA).

Allocation Policy for ETFs Trading Under UTP

The Exchange states that the intent of the Exchange's Allocation Policy and Procedures (the "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 ("QOMC"). The Allocation Committee renders decisions based on the allocation criteria specified in this policy.⁸

The Exchange believes that it would be appropriate to extend the pilot that modifies 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 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. For purposes of the Allocation Policy, ETFs collectively include Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual) and Trust Issued

⁸ See Securities Exchange Act Release No. 42746 (May 2, 2000), 65 FR 30171 (May 10, 2000) (SR-NYSE-99-34).

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.