

2. Before any currency transaction is entered into, the Fund or its adviser must obtain such available market information as they deem necessary to determine that the price to be paid or received for, and the terms of, each transaction are at least as favorable as that available from other sources. This shall include the following information, without limitation:

With respect to round lot currency transactions, the Fund must obtain and document the competitive indications with respect to the specific proposed transaction, either from two other currency dealers or from one currency dealer and from an automated quotation system approved by the board of directors of the Fund, including a majority of non-interested directors. In the case of odd lot currency transactions, the Fund must obtain and document the competitive indications with respect to (a) the specific proposed transaction from two other currency dealers; and (b) a round lot transaction of the same currency with the same settlement terms from one other currency dealer or an automated quotation system. Competitive quotation information must include price and settlement terms. Dealers must be those who, in the experience of the Fund's adviser, have demonstrated the consistent ability to provide professional execution of currency transactions at competitive market prices in the currencies of the type desired. The dealers also must be those who, in the experience of the Fund's adviser, are in a position to quote favorable prices.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-10183 Filed 4-16-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39853; File No. SR-Amex-97-48]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval To Proposed Rule Change Relating to Listing and Trading of Index Warrants on the Merrill Lynch 1998 Equity Focus Index

April 13, 1998.

I. Introduction

On December 22, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities

and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to approve for listing and trading index warrants based on the Merrill Lynch 1998 Equity Focus Index ("Index").

The proposed rule change was published for comment in the **Federal Register** on February 3, 1998.³ No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled index warrants based on the Index, an equal-dollar weighted index developed by Merrill Lynch, Pierce, Fenner & Smith, Inc. The Exchange has represented that the listing and trading of warrants based on the Index will comply in all respects with Amex Rules 1100 through 1110 and Section 106 of the Amex Company Guide.

Design of the Index

The Exchange has represented that the Index is narrow-based⁴ and composed of the stocks (or American Depositary Receipts ("ADRs") thereon) of 17 companies⁵ representing various industries that are traded on the New York Stock Exchange ("NYSE") or through the facilities of the National Association of Securities Dealers Automated Quotation system ("Nasdaq"). The Index is equal-dollar weighted and is, therefore, designed to ensure that each of the component securities is initially represented in an approximately "equal" dollar amount in the Index. Accordingly, each of the 17 companies included in the Index will represent approximately 5.882 percent of the weight of the Index at the time of issuance of the warrant. The Index multipliers will be determined to yield an Index value of 100.00 on the date the

warrant is priced for initial offering to the public.

According to the Amex, the total market capitalization of the Index totaled \$380 billion on December 10, 1997. The median capitalization of the companies in the Index on that date was \$9.4 billion and the average market capitalization of these companies was \$22 billion. The individual market capitalization of the companies ranged from \$1.7 billion to \$106 billion. In addition, minimum monthly trading volume in the Index stocks ranged from approximately 330,000 shares to 54.4 million shares during the six month period from June through November 1997.

According to the Exchange, 15 of the Index's 17 component securities meet the current criteria for standardized options trading set forth in Rule 915. Only two component securities, Telecom Italia SpA and Toyota Motor Corporation, are represented by ADRs and according to the Amex, in both instances, comprehensive surveillance sharing arrangements are in place with the appropriate regulatory authorities in each relevant country. The Amex represents that no component security represents more than 25% of the weight of the index and the five highest weighted securities do not account for more than 50% of the weight of the Index.

Amex contemplates listing a single issuance of warrants based on the Index,⁶ with a term ranging from one to three years. If the Amex seeks to list and trade other products based on the Index, including other issuances of Index warrants, the Exchange will advise the Commission to determine whether an additional filing pursuant to Rule 19b-4⁷ is necessary. In addition, if the term of the warrants exceeds one year, the Exchange will monitor the options eligibility of the underlying securities. If less than 75% of the weight of the Index is composed of securities that are options eligible, the Amex will notify the Commission.⁸

Maintenance of the Index

Shares of a component stock may be replaced (or supplemented) with other securities under certain circumstances, such as the conversion of a component stock into another class of security, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 39580 (January 26, 1998) 63 FR 5577.

⁴ Telephone conversation between Claire McGrath, Vice President and Special Counsel, Amex, and Deborah Flynn, Division of Market Regulation ("Division"), Commission, on January 22, 1998.

⁵ The component securities of the Index are as follows: Bank of New York Co., Inc.; Chubb Corp.; Comcast Corporation; Cracker Barrel Old Country Stores; Delta Airlines, Inc.; DST Systems, Inc.; Federal National Mortgage Association; Guidant Corporation; Masco Corp.; Office Depot, Inc.; Pfizer, Inc.; Protective Life Corp.; Questar Corp.; Tenet Healthcare Corp.; Telecom Italia SpA; KLM Royal Dutch Airlines; and Toyota Motor Corporation.

⁶ Telephone conversation between Claire McGrath, Vice President and Special Counsel, Amex, and Deborah Flynn, Division, Commission, on January 22, 1998.

⁷ 17 CFR 240.19b-4.

⁸ Telephone conversation between Claire McGrath, Vice President and Special Counsel, Amex, and Deborah Flynn, Division, Commission, on April 8, 1998.

termination of a depositary receipt program or the spin-off of a subsidiary. If the stock remains in the Index, the multiplier of that security in the portfolio may be adjusted to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event that a security in the Index is removed due to a corporate consolidation and the holders of such security receive cash, the cash value of such security will be included in the Index and will accrue interest at LIBOR to term, compounded daily.

Trading of the Index Warrants

The Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated index level. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated index level. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Calculation and Dissemination of the Value of the Index

Similar to other stock index values published by the Exchange, the value of the proposed Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

The multiplier of each of the 17 component stocks in the Index portfolio will remain fixed except in the event of certain types of corporate actions. Such corporate action includes the payment of a dividend other than an ordinary cash dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event. The multiplier of each component stock may also be adjusted, if necessary, in the event of a merger, consolidation, dissolution or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders, the expropriation or nationalization of an issuer or the imposition of certain foreign taxes on shareholders of a foreign issuer.

Listing and Trading of the Index Warrants

As stated above, the listing and trading of the proposed warrants on the Index will comply in all respects with Amex Rules 1100 through 1110 and Section 106 of the Amex Company Guide. These provisions will govern all aspects of the listing and trading of the Index warrants, including issuer eligibility,⁹ position and exercise limits,¹⁰ reportable positions,¹¹ and trading halts and suspensions.¹²

In addition, these warrants will be sold only to accounts approved for the trading of standardized options¹³ and the Exchange's options suitability standards will apply to recommendations regarding Index warrants.¹⁴ Finally, the Amex will distribute a circular to its membership, prior to the commencement of trading, calling attention to specific risks associated with warrants on the Index.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act¹⁵ and the rules and regulations thereunder applicable to a national securities exchange.¹⁶ Specifically, the Commission believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act¹⁷ in that the trading of warrants based on the Index will serve to protect the public interest and will help to remove impediments to a free and open market by providing investors holding positions in some or all of the securities underlying the Index with a means to hedge exposure to the market risk associated with their portfolios.¹⁸

Nevertheless, the trading of warrants on the Index raises several concerns relating to the design and maintenance

of the Index, customer protection, surveillance, and market impact. The Commission believes however, for the reasons discussed below, that the Amex has adequately addressed these concerns.

The Commission finds that it is appropriate and consistent with the Act for the Amex to designate the Index as narrow-based for warrant trading as the Index is composed of a limited number of stocks. The Commission believes that the liquid markets, large capitalizations and relative weightings of the Index's component stocks significantly minimizes the potential for manipulation of the Index. First, the 17 stocks that comprise the Index, of which 14 trade on the NYSE and 3 trade on Nasdaq, are actively-traded. During the six month period from June 1997 through November 1997, minimum monthly trading in the Index stocks ranged from approximately 330,000 shares to 54.4 million shares. Second, the market capitalization of the stocks comprising the Index is very large. Specifically, the total capitalization of the Index, as of December 10, 1997, was approximately \$22 billion, with the market capitalization of the individual stocks in the Index ranging from \$1.7 billion to \$106 billion. In addition, the median capitalization of the companies in the Index on that date was \$9.4 billion, and the average market capitalization of these companies was \$22 billion. Third, no one particular stock dominates the Index. Specifically, no single stock accounts for more than approximately 5.882 percent of the Index's value.

The Commission notes that with respect to the maintenance of the Index, shares of a component stock will only be replaced or supplemented under certain limited circumstances, such as the conversion of a component stock into another class of security, the termination of a depositary receipt program or the spin-off of a subsidiary. Accordingly, all replacement or supplemental Index component securities will be related to the original component stock.¹⁹

Although the Index, as currently composed, contains highly capitalized and actively-traded issues reflected in an equal-weighted manner, the Amex has not proposed Index maintenance criteria that ensures the Index will remain this way. The Commission understands that the Index is designed

⁹ See Section 106 of the Amex Company Guide.

¹⁰ See Amex Rules 1107 and 1108.

¹¹ See Amex Rule 1110.

¹² See Amex Rule 1109.

¹³ See Amex Rule 1101.

¹⁴ See Amex Rule 1102.

¹⁵ 15 U.S.C. 78f.

¹⁶ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

¹⁹ In addition, as noted above, in the event that a security in the Index is removed due to a corporate consolidation and the holders of such security receive cash, the cash value of such security will be included in the Index and will accrue interest at LIBOR to term.

to reflect a static portfolio of stocks and the active Index maintenance (i.e., including replacing Index components) generally is inconsistent with such approach. In order to address the possibility that the quality of the stocks in the Index could deteriorate or one or several stocks could dominate the Index, the Amex has represented that it is seeking only to list and trade a single issuance of warrants on the Index with a limited duration of one to three years. The Commission notes that if the Exchange proposes to list and trade other products based on Index, including other index warrants, the Exchange will advise the Commission in order to determine whether a rule filing pursuant to Section 19(b) of the Act²⁰ will be necessary. In addition, the Commission notes that if the term of the warrants exceeds one year, the Exchange will monitor the options eligibility of the underlying securities. If less than 75% of the weight of the Index is composed of securities that are options eligible, the Amex will notify the Commission. Given the high quality of the component stocks, as well as the other factors noted above, the Commission believes that the absence of active Index maintenance criteria is not fatal to the Commission's approval of the listing and trading of a single issuance of warrants on the Index.

The Commission further notes that the rules and procedures of the Exchange adequately address the special concerns attendant to the trading of Index warrants. Specifically, the applicable suitability, account approval, disclosure, and compliance requirements of the applicable Amex provisions satisfactorily address potential public customer concerns. Moreover, the Amex plans to distribute a circular to its membership calling attention to specific risks associated with warrants on the Index. Finally, pursuant to the Exchange's listing guidelines, only companies capable of meeting the Amex's index warrant issuer standards will be eligible to issue Index warrants.²¹

The Commission believes that the listing and trading of warrants on the Index will not adversely impact the underlying securities because the Index is comprised of highly-capitalized securities that are actively-traded. In addition, the Amex has established

reasonable position and exercise limits for narrow-based stock index warrants,²² which will serve to minimize potential manipulation and other stock market concerns.

Finally, the Amex represents²³ that its existing surveillance procedures will allow the Exchange to detect and deter potential manipulations and other trading abuses in the derivatives and underlying securities markets. The Exchange further represents that comprehensive surveillance sharing agreements are in place with the appropriate regulatory authorities in the countries that oversee the primary markets for the two securities in the Index that are represented by ADRs. Accordingly, the Commission believes that the Amex should have available to it the regulatory tools necessary to properly surveil for abuses in the trading of warrants on the Index.

V. Conclusion

For the foregoing reasons, the Commission finds that the Amex's proposal to list and trade warrants based on the Index is consistent with the requirements of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-Amex-97-48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-10184 Filed 4-16-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39851; File No. SR-PHLX-97-35]

April 10, 1998.

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change To Amend Its By-Law Article XII, Section 12-10, With Respect to the Eligibility of Persons To Serve as Inactive Nominees

On December 15, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder² to amend its By-Law Article XII, Section 12-10, with respect to the eligibility of persons to serve as inactive nominees. On January 14, 1998, the Exchange submitted Amendment No. 1 to the filing, in which it proposed a new rule, Phlx Rule 21, defining "Inactive Nominee," and explained the role of an Inactive Nominee on the Phlx.³

Notice of the proposed rule change, including Amendment No. 1, was published in the **Federal Register**.⁴ The Commission received no comment letters in response to the filing. This order approves the proposed rule change, as amended.

I. Description of the Proposal

Phlx's proposal would amend its By-Law Article XII, Section 12-10, with respect to the eligibility of persons to serve as Inactive Nominees.⁵

Phlx By-Law Article XII, Section 12-10, sets forth the eligibility requirements

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Murray L. Ross, Vice President and Secretary, Phlx, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated January 14, 1998. Amendment No. 1 is described further below.

⁴ See Securities Exchange Act Release No. 39622 (Feb. 4, 1998) 63 FR 7488 (Feb. 13, 1998).

⁵ In Amendment No. 1 to the filing, the Phlx proposed a new rule, to be designated as Rule 21, which would define an Inactive Nominee as follows:

The term inactive nominee shall mean a natural person associated with and designated by a member organization who has applied for and been approved by the Admissions Committee for such status and is registered as such with the Office of the Secretary. An inactive nominee shall have no rights or privileges of membership unless and until said inactive nominee becomes a member of the Exchange pursuant to the By-Laws and Rules of the Exchange. An inactive nominee merely stands ready to assume legal title to a membership upon notice by the member organization to the Office of Secretary to be transferred intra-firm on an expedited basis.

²² The Commission notes that position limits for narrow-based stock index warrants are set at a level roughly equivalent to 75 percent of narrow-based index options. As a result, position limits for warrants based on the Index will be nine million.

²³ Telephone conversation between Claire McGrath, Vice President and Special Counsel, Amex, and Deborah Flynn, Division, Commission, on March 16, 1998.

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).

²⁰ 15 U.S.C. 78s(b).

²¹ See Section 106 of the Amex Company Guide which requires, among other things, that the issuer have tangible net worth in excess of \$250 million and otherwise substantially exceed size and earnings requirements in Section 101(A) of the Company Guide or meet the alternative guideline set forth in paragraph (a).