

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. 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

The purpose of the proposed rule change is to attract business to the Exchange. Specifically, the Phlx believes that waiving the 5 percent assessment through December 31, 2003 and implementing a modest monthly fee of \$250 should encourage floor brokers to send additional order flow to the Exchange and enhance the competitiveness of the Exchange. The Exchange will reassess the waiver of the 5 percent assessment as appropriate,⁶ and will file any modification to it with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act.⁷

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4)⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 were either solicited or received.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹¹ because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission 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 proposal 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 Exchange. All submissions should refer to file number SR-Phlx-2002-70, and should be submitted by December 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46886; File No. SR-Phlx-2002-39]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Providing Automatic Executions for Eligible Orders at the Exchange's Disseminated Size, Subject to a Minimum and Maximum Eligible Size Range

November 22, 2002.

I. Introduction

On July 3, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with 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 provide automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum eligible size range to be determined by the specialist, on an issue-by-issue basis. Notice of the proposed rule change was published for comment in the **Federal Register** on August 15, 2002.³ The Commission received no comments on the proposal. On August 26, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ On November 20, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.⁵ The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 46323 (August 8, 2002), 67 FR 53374.

⁴ See letter from Richard S. Rudolph, Director and Counsel, Phlx, to Sonia Patton, Special Counsel, Division of Market Regulation ("Division"), Commission, dated August 23, 2002 ("Amendment No. 1"). In Amendment No. 1, the Phlx (i) requested accelerated approval of the proposed rule change; (ii) explained how its current pilot, regarding the disengagement of its automatic execution system ("AUTO-X") once the AUTO-X guarantee for a particular option has been exhausted within a fifteen second time frame, will interact with this proposal; (iii) stated that, although AUTO-X guarantees sizes are subject to approval by the Phlx's Options Committee, that the Committee has delegated this responsibility to two Phlx Floor Officials; and (iv) discussed how the proposed rule will work when the disseminated size is greater than the maximum guaranteed AUTO-X size and how options contracts will be allocated.

⁵ See letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated November 20, 2002 ("Amendment No. 2"). In Amendment No. 2, the Phlx amended the proposed rule text to reflect a change to Exchange Rule 1080(c) that was made to

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⁶ Absent any modification, the 5 percent assessment will recommence on January 1, 2004.

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² 17 CFR 200.30-3(a)(12).

is approving the proposed rule change, and is publishing notice of, and granting accelerated approval to, Amendment Nos. 1 and 2 to the proposed rule change.

II. Description of the Proposal

The Exchange proposes to codify a change in its AUTOM and Auto-Quote⁶ systems that would permit the automatic execution of eligible orders⁷ at the Phlx's disseminated size, as defined in Exchange Rule 1082(a)(ii).⁸ Currently, the Exchange automatically executes eligible orders at a size equal to the AUTO-X guarantee for a given option, regardless of the Exchange's disseminated size. The proposed rule change would allow the Exchange to provide automatic executions for eligible orders at a size equal to the Exchange's disseminated size, subject to minimum and maximum guaranteed AUTO-X sizes (which the Exchange represents cannot exceed the Exchange's floor-wide allowable maximum guaranteed AUTO-X size for an option, which currently is 250 contracts),⁹ to be determined by the specialist and subject to the approval of the Options Committee.¹⁰

the rule subsequent to the filing of the proposed rule change on July 3, 2002. Amendment No. 2 reflects the fact that the allowable AUTO-X guarantee for options on the Nasdaq-100 Index Tracking Stock ("QQQ") is now a maximum of 2000 contracts for the first two near term expiration months and 1000 contracts for all other expiration months.

⁶ Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations. See Exchange Rule 1080, Commentary .01(a).

⁷ AUTO-X eligible orders are orders that do not otherwise bypass AUTO-X for manual handling by the specialist in accordance with Exchange Rule 1080(c)(iv).

⁸ See Securities Exchange Act Release No. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002) (notice of filing and order granting accelerated approval File No. SR-Phlx-2002-15).

⁹ In Amendment No. 2, the Exchange noted that the QQQ options are permitted to have an AUTO-X guaranteed size of up to 2000 contracts for the first two near term expiration months and 1000 contracts for all other expiration months. See Securities Exchange Act Release Nos. 46307 (August 2, 2002), 67 FR 52508 (August 12, 2002) (notice of filing and immediate effectiveness of File No. SR-Phlx-2002-43, increasing the AUTO-X guarantee for QQQ options up to 1000 contracts); 34531 (September 23, 2002) (notice of filing and immediate effectiveness of File No. SR-Phlx-2002-47, increasing the AUTO-X guarantee for QQQ options up to 2000 contracts for the first two near term expiration months and to 1000 contracts for all other expiration months). Thus, under the proposed rule change, automatic executions for eligible orders in QQQ options up to the Exchange's disseminated size could be set at a maximum of 2000 contracts for the first two near term expiration months and 1000 contracts for all other expiration months.

¹⁰ The Exchange represented that the Options Committee may, in its discretion, increase the size

The proposed amendments to Phlx Rule 1080(c) would include the following provisions:

1. If the Exchange's disseminated size is greater than the minimum guaranteed AUTO-X size, and less than the maximum guaranteed AUTO-X size, inbound eligible orders would be automatically executed up to the Exchange's disseminated size. Remaining contracts would be executed manually by the specialist or placed on the limit order book.

Example 1:

Minimum Guaranteed AUTO-X Size=10
Maximum Guaranteed AUTO-X
Size=50
Disseminated Size=35
Inbound Order Size=90

In this example, the Exchange would automatically execute 35 contracts (the disseminated size). The specialist would be required to execute the remaining 55 contracts manually or, in the case of a limit order, to place the remaining 55 contracts on the limit order book, if the automatic execution has exhausted the size at that price.

2. If the Exchange's disseminated size is less than the minimum guaranteed AUTO-X size for that option, inbound eligible orders delivered via AUTOM would be automatically executed up to such minimum guaranteed AUTO-X size. Remaining contracts would be executed manually by the specialist or placed on the limit order book.

Example 2:

Minimum Guaranteed AUTO-X Size=10
Maximum Guaranteed AUTO-X
Size=50
Disseminated Size=6
Inbound Order Size=20

In this example, the Exchange would automatically execute 10 contracts (the minimum guaranteed AUTO-X size) even though its disseminated size is for 6 contracts. The specialist would be required to execute the remaining 10 contracts manually at that price or the

of orders in one or more classes of multiply-traded equity options eligible for AUTO-X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Commission pursuant to Section 19(b)(3)(A) of the Act. See Exchange Rule 1080(c). In Amendment No. 1, the Exchange noted that, because it would be cumbersome and impractical for the Options Committee to meet and vote to approve a change to the guaranteed AUTO-X size for an option each time a specialist determines to make such a change, the Options Committee has delegated its authority to approve such changes to two Exchange Floor Officials, who would indicate their approval by signing the appropriate form and submitting the form to Market Surveillance.

next best price or, in the case of a limit order, to place the remaining 10 contracts on the limit order book, if the automatic execution has exhausted the size at that price.

3. If the Exchange's disseminated size is greater than the maximum guaranteed AUTO-X size, inbound eligible orders would be automatically executed up to such maximum guaranteed AUTO-X size. Remaining contracts would be executed manually by the specialist at the disseminated price.

Example 3:

Minimum Guaranteed AUTO-X Size=10
Maximum Guaranteed AUTO-X
Size=50
Disseminated Size=100
Inbound Order Size=90

In this example, the Exchange would automatically execute 50 contracts (the maximum guaranteed AUTO-X size). The specialist would be required to execute the remaining 40 contracts manually at that same price because the Exchange's rules concerning firm quotations¹¹ require the Exchange to be firm at that price up to the disseminated size of 100 contracts.

The Exchange represents that the proposed rule change would provide that the minimum and maximum guaranteed AUTO-X sizes for a given option is to be determined on an issue-by-issue basis by the specialist and subject to the approval of the Options Committee.¹² In determining whether to approve the minimum and maximum guaranteed AUTO-X size for each option, the Options Committee may consider, without limitation, the number of series and open interest in the option; the volatility of the option; the liquidity of the option; historical and projected volume of trading in the option; and the projected share of total trading in the option that is likely to occur at the Exchange, as well as other relevant factors.

The Exchange also proposes to delete references to public customer orders from the description of AUTO-X set forth in Exchange Rule 1080(c) in order to reflect that, in certain issues, orders for the proprietary account(s) of broker-dealers may be eligible for automatic execution via AUTO-X.¹³ Minimum and maximum sizes could be for a

¹¹ See Exchange Rule 1082, Firm Quotations.

¹² The Exchange has stated that the maximum guaranteed AUTO-X size for a given option generally would not be changed intra-day. Telephone call between Sonia Patton, Division, Commission, and Richard Rudolph, Director and Counsel, Phlx (August 5, 2002).

¹³ See Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (File No. SR-Phlx-2001-40).

different number of contracts for broker-dealer orders than for customer orders.¹⁴ In addition, the Exchange represents that contracts that are automatically executed would be allocated automatically on the Exchange's "Wheel."¹⁵ The Exchange notes that contracts executed manually would be allocated by the specialist in the same manner as all orders received via AUTOM that are manually executed by the specialist in accordance with Phlx rules.¹⁶

III. Discussion

The Commission has carefully reviewed the proposed rule change, as amended, and finds that it 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).¹⁷ Specifically, the Commission finds that approval of the proposed rule change is consistent with section 6(b)(5)¹⁸ 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.

The Commission believes that the proposed rule change, as amended, should enable the Phlx to codify the merger of its new Auto-Quote system with its current AUTO-X system, and should provide for a more orderly system for the automatic execution of

eligible orders through AUTO-X. The Commission notes that this proposed rule change will enable the Phlx to automatically execute eligible orders at the Exchange's disseminated size, subject to a minimum and a maximum AUTO-X guarantee size that would be set by the specialist on an issue-by-issue basis, subject to the Phlx Options Committee's approval. In addition, the Commission believes that providing automatic executions at the Exchange's disseminated size should enhance the ability of investors to ascertain the actual number of contracts available for automatic execution of eligible orders. Accordingly, the proposed rule change should result in more transparency for investors and the marketplace.

The Commission also notes that the Exchange is eliminating the reference to public customers orders from Exchange Rule 1080(c) because, for certain issues, broker-dealer orders may be eligible for automatic execution. The Commission further notes that the Exchange has represented that, because public customers and broker-dealers may have different AUTO-X guarantee sizes, the Exchange will make sure that the larger of the two sizes will constitute the AUTO-X guarantee for purposes of the pilot.¹⁹ This is based on the fact that, as a business practice, the Exchange represents that it wants to provide automatic executions for the largest size possible.²⁰

In addition, the Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission finds that Amendment No. 1 provides clarification as to how the proposed rule change will operate in relation to Phlx's current pilot in which AUTO-X is disengaged for thirty seconds once the AUTO-X guarantee is exhausted within a fifteen-second period. In addition, Amendment No. 1 provides a more detailed description as to how orders will be allocated and executed, and clarifies that the Options Committee will delegate its authority to approve the minimum and maximum AUTO-X guarantee size for a particular option to two Phlx Floor Officials. Amendment No. 2 amends the proposed rule text to reflect changes to Exchange Rule 1080(c) that have been made to the rule since this original 19b-4 proposal was filed on July 3, 2002. The Commission, therefore, finds good cause to approve Amendment Nos. 1 and 2 to

the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Amendment Nos. 1 and 2 to 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-2002-39 and should be submitted by December 24, 2002.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-Phlx-2002-39) is hereby approved, and that Amendment Nos. 1 and 2 to the proposed rule change is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Margaret H. McFarland,
Deputy Secretary.

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DEPARTMENT OF STATE

Office of the Coordinator for Counterterrorism

[Public Notice 4213]

Designation of Foreign Terrorist Organizations

Pursuant to section 219 of the Immigration and Nationality Act ("INA"), as added by the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104-132, § 302, 110 Stat. 1214, 1248 (1996), and amended by the

¹⁴ Currently, the Exchange is operating an AUTO-X pilot program that disengages AUTO-X in an option for 30 seconds when the number of contracts executed automatically for the option meets the AUTO-X guarantee within a 15 second time frame. See Securities Exchange Act Release No. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002). The Exchange has stated that this pilot will continue to operate and that if there is a different size for customers and broker-dealers, the larger of the two sizes will constitute the AUTO-X guarantee for purposes of the pilot. This is based on the fact that, as a business practice, the Exchange wants to provide automatic executions for the largest size possible. Telephone call between Sonia Patton, Division, Commission, and Richard Rudolph, Director and Counsel, Phlx (August 5, 2002). See also Amendment No. 1, *supra* note 4.

¹⁵ See Phlx Rule 1080(g) and Option Floor Procedure Advice ("OFPA") F-24.

¹⁶ In a separate rule proposal, the Exchange has proposed amendments to OFPA F-2, OFPA F-12, and Exchange Rule 1014(g) regarding who is responsible for allocating a trade executed on its floor. See File No. SR-Phlx-2001-28. In another separate proposal, the Exchange proposed amendments to OFPA B-6 and Exchange Rule 1014(g) regarding the method for allocating trades executed on its floor. See File No. SR-2001-39.

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

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ For a brief description of the pilot, see *supra* note 14.

²⁰ See *supra* note 14.

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).