

- The system(s) must have the ability to generate reports for the location detailing those persons entitled to access OPRA information, and to retain these reports for a period of three years for audit purposes.

In addition, the Professional Subscriber must have a policy in place prohibiting the sharing of User IDs, and must have procedures in place to assure reasonable compliance with the policy.

If any of these requirements is not satisfied (e.g., if the entitlement control system does not prohibit simultaneous access by the same User ID), device-based fees must be based on counting the devices that are capable of receiving OPRA information rather than on counting User IDs.

Counting Devices and User IDs

OPRA does not require that more than one fee be paid with respect to any device, or any User ID, that is capable of receiving OPRA information, even if the device or User ID is capable of receiving OPRA information from more than one source or "service." Thus, for example, if a particular device is receiving data from both a Vendor A service and a Vendor B service, OPRA does not require that the Professional Subscriber pay two device-based fees for that device. Similarly, if a particular device is receiving data from both a Vendor A service and a datafeed controlled by the Professional Subscriber itself, OPRA does not require that the Professional Subscriber pay two device-based fees for that device.

Professional Subscriber's Responsibility to Verify Invoices

Each Professional Subscriber is responsible for verifying that the invoices it receives from OPRA are accurate. In particular, each Professional Subscriber is responsible for verifying that it is not being billed twice for the same device or User ID. OPRA invoices each Professional Subscriber that has elected to pay device-based fees based on information that OPRA receives from Vendors (with respect to devices and User IDs that are under Vendor control) and from the Professional Subscriber itself (with respect to devices and User IDs that are under the control of the Professional Subscriber). It can be difficult for OPRA to recognize that a device or User ID reported as receiving OPRA information by two different Vendors, or by a Vendor and the Professional Subscriber, is in fact the same device or User ID.

If a Professional Subscriber informs OPRA that a current OPRA invoice double bills for a particular device or User ID or is otherwise inaccurate,

OPRA will correct the current invoice and its records so that the double billing or other inaccuracy does not continue. However, OPRA's policy is to not provide refunds or credits for a double billing or other inaccuracy for any period of time prior to the period covered by the Professional Subscriber's current invoice.

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II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3-2 under the Act,⁴ OPRA designates this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, thereby qualifying for effectiveness upon filing. The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3-2(c)(2) under the Act,⁵ if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a national market system; or otherwise in furtherance of the purposes of the Act. Further, OPRA intends to send a copy of the Policies to all current Professional Subscribers with the next monthly invoices that are sent out by OPRA following this filing, and to add the Policies to the package of materials that it supplies to vendors for distribution to persons intending to sign Professional Subscriber Agreements with OPRA. In addition, as soon as practicable OPRA intends to post a copy of the Policies on its website (www.opradata.com).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the

proposed OPRA Plan amendment between the Commission and any person, other than those 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 the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR-OPRA-2002-05 and should be submitted by November 20, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46718; File No. SR-CBOE-2002-48]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Accelerated Approval of Proposed Rule Change Relating to Amendments to Its Constitution and Rules Pertaining to the Governance of the Exchange

October 24, 2002.

On August 26, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend CBOE's Constitution and Rules relating to governance of the Exchange. The principal governance proposal increases the public representation on the Exchange's Board of Directors ("Board") and three committees of the Board so that the Board and these three committees will be balanced between industry (member) and public directors. The Exchange also proposed to codify in its Constitution establishment of the Audit Committee, Compensation Committee, and Floor Directors Committee of the Board. It also proposed to amend its Constitution to clarify that the authority of the Vice Chairman of the Board to coordinate the activities of Exchange committees does not extend to the Executive, Audit or Compensation Committees. Finally, the

⁶ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴ 17 CFR 240.11Aa3-2(c)(3)(i).

⁵ 17 CFR 240.11Aa3-2(c)(2).

CBOE proposed certain "housekeeping" amendments to its Constitution and Rules.

The proposed rule change was published for comment in the **Federal Register** on October 2, 2002.³ The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange⁴ and, in particular, the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with the requirement of Section 6(b)(5)⁶ because it is designed to promote just and equitable principles of trade and to protect investors and the public interest by increasing public representation on the Exchange's Board and certain committees so that the Board and those committees will be balanced between industry (member) and public directors.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after notice of publication in the **Federal Register**, in light of the absence of adverse comments on the proposed rule change. Acceleration of this approval will permit the CBOE to implement the changes without delay.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-CBOE-2002-48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46706; File No. SR-Phlx-2002-52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend the PACE Price Improvement and Order Execution and Price Protection Pilot Programs Until March 31, 2003

October 22, 2002.

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 September 26, 2002 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change 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

The Exchange seeks to extend two PACE (Philadelphia Stock Exchange Automated Communication and Execution System)⁵ pilot programs that were introduced with the advent of decimal pricing in the securities industry.⁶ The first PACE pilot program, which is found in Supplementary Material .07(c)(i) to Rule 229, consists of an automated price improvement feature that incorporates a percentage of

the spread between the bid and the offer (the "price improvement pilot program"). It has been in effect since January 30, 2001.⁷

The second PACE pilot program, which is found in Supplementary Material .05 and .07(c)(ii) to Rule 229, incorporates immediate execution of certain market orders through the Public Order Exposure System ("POES") and mandatory double-up/double-down price protection (the "order execution and price protection pilot program"). It has been in effect since August 25, 2000.⁸

The Exchange is not making any substantive changes to the price improvement or the order execution and price protection pilot programs that have previously been authorized by the Commission, with the exception of amending language that indicates that the pilot programs are extended through March 31, 2003.⁹

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

⁷ The price improvement pilot program was established in SR-Phlx-2001-12. See Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001). It was extended several times, currently through September 30, 2002. See Securities Exchange Act Release Nos. 44672 (August 9, 2001), 66 FR 43285 (August 17, 2001)(SR-Phlx-2001-67); 45078 (November 19, 2001), 66 FR 59293 (November 27, 2001)(SR-Phlx-2001-101); 45284 (January 15, 2002), 67 FR 3253 (January 23, 2002)(SR-Phlx-2002-01); and 45889 (May 7, 2002), 67 FR 32076 (May 13, 2002)(SR-Phlx-2002-28).

⁸ The order execution and price protection pilot program was established in SR-Phlx-00-08. See Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000). It was extended several times, currently through September 30, 2002. See Securities Exchange Act Release Nos. 44185 (April 16, 2001), 66 FR 20511 (April 23, 2001)(SR-Phlx-2001-20); 44818 (September 19, 2001), 66 FR 49240 (September 26, 2001)(SR-Phlx-2001-81); 45079 (November 19, 2001), 66 FR 59292 (November 27, 2001)(SR-Phlx-2001-102); 45295 (January 16, 2002), 67 FR 3624 (January 24, 2002)(SR-Phlx-2002-03); and 45889 (May 7, 2002), 67 FR 32076 (May 13, 2002)(SR-Phlx-2002-28).

⁹ Any proposed language changes other than the new date of extension are technical, non-substantive amendments to conform the language of the pilots and clarify that trading is in decimals only and the extension date applies to both pilots. The text of the proposed rule change is available at the Exchange and at the Commission.

³ See Securities Exchange Act Release No. 46546 (September 24, 2002), 67 FR 61934.

⁴ In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6). The Exchange has requested, and the Commission agrees, to waive the pre-filing notice required by Rule 19b-4(f)(6).

⁵ PACE is the Exchange's automated order routing, delivery, execution and reporting system for equities.

⁶ The Exchange is extending both pilot programs pursuant to a telephone call on September 19, 2002, between Joseph Morra, Division of Market Regulation, Commission, and Jurij Trypupenko, Phlx. The Commission has noticed the Exchange's proposed rule change to make the pilot programs permanent, but has not yet approved the Exchange's request to make the pilot programs permanent. See Securities Exchange Act Release No. 45580 (March 18, 2002), 67 FR 13399 (March 22, 2002)(SR-Phlx-2002-18).