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 Exchange's automatic execution system (''Auto-Ex'') automatically executes public customer market and marketable limit orders within certain size parameters. PCX Rule 6.87(b) currently provides that the Options Floor Trading Committee (''OFTC'') shall determine the size of orders that are eligible to be executed through Auto-Ex. The rule further provides that although the OFTC may change the order size parameter on an issue-by-issue basis, the maximum order size for execution through Auto-Ex is fifty contracts for both equity and index options.[3] The Exchange is now proposing to increase the maximum size of option orders that are eligible for automatic execution, subject to designation by the OFTC on an issue-by-issue basis, to 100 contracts.[4]

The Exchange believes that these changes will help it to meet the changing needs of customers in the marketplace and give the Exchange better means of competing with other options exchanges for order flow, particularly in multiply traded issues. The Exchange also believes that increasing to 100 the number of option contracts executable through the Exchange's Auto-Ex order execution system will enable the Exchange to more effectively and efficiently manage increased order flow in actively traded option issues consistent with its obligations under the Act. In addition, this increase should bring the speed and efficiency of automated execution to a greater number of retail orders. The PCX further believes that it should have flexibility to compete for order flow with other exchanges without being limited to responding to increases in

automatic execution eligibility levels initiated by those other exchanges.[5]

The Exchange represents that it believes that the increase will not expose the Exchange's Auto-Ex system to risk of failure or operational breakdown. The Exchange represents that it further believes that its systems capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from implementation of this proposal.

2. Statutory Basis

The Exchange believes that this proposal is consistent with section 6(b)[6] of the Act, in general, and furthers the objectives of section 6(b)(5),[7] in that it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

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

PCX does not believe that the proposed rule change will impose any 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*

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether 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 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 PCX. All submissions should refer to File No. SR–PCX–00–18 and should be submitted by December 6, 2000.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43524; File No. SR–Phlx–00–74]**

**Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Regarding Exchange Liability in Connection with the Administration of its Proprietary Indices**

November 6, 2000.

### I. Introduction

On August 4, 2000, the Philadelphia Stock Exchange, Inc. (''Exchange'' or ''Phlx'') 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 seeking to amend Phlx Rule 1102A, Limitation of Exchange Liability, to add to the

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[3] *See* Securities Exchange Act Release No. 41823 (September 1, 1999), 64 FR 49265 (September 10, 1999) (approving PCX proposal to increase the maximum size of index and equity option orders that may be automatically executed, from twenty to fifty contracts). Concurrent with its issuance of this notice, the Commission approved, on an accelerated basis, a PCX proposal to increase the maximum order size for Auto-Ex eligibility from fifty contracts to seventy-five contracts. *See* Securities Exchange Act Release No. 43518 (November 3, 2000).

[4] The Exchange notes that, pursuant to PCX Rule 6.86(g), if the OFTC determines, pursuant to PCX Rule 6.87(b), that the size of orders in an issue that are eligible to be executed on Auto-Ex will be greater than twenty contracts, then the trading crowd will be required to provide a market depth for manual (non-electronic) orders in that greater amount, as provided in PCX Rule 6.86(a).

[5] *See* PCX Rule 6.87(c) (permitting the PCX to match the maximum size of orders eligible for automatic execution that are permitted on another options exchange in multiply traded issues).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-1.

limitation of the Exchange's liability, in connection with its administration of Phlx proprietary indices, negligent acts or omission. Notice of the proposed rule change appeared in the **Federal Register** on September 22, 2000.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

The Phlx currently lists and trades options on several proprietary indices.[4] Phlx Rule 1102A limits the Exchange's liability in connection with the administration of its proprietary indices. The Exchange proposes to amend Phlx Rule 1102A to disclaim liability for negligent conduct. The Exchange represents that there is a great deal work involved in the daily calculation and dissemination of these indices. In addition, the Exchange represents that although much of such work is automated, manual input is still required and the potential for human error exists which exposes the Exchange to a risk of liability. Potential human errors include inputting a symbol or index value incorrectly or missing a corporate action that has an effect on the index.

Phlx Rule 1102A disclaims Exchange liability for damages caused by errors, omissions or delays in the calculation or dissemination of any index value resulting from any conduct beyond the reasonable control of the Exchange, including an act of God, a power failure, or any error, omission or delay in the reported price of the underlying security. The Exchange believes that these disclaimer provisions are arguably ambiguous with respect to whether the Exchange remains potentially liable for damages caused by any human error or omission by an Exchange employee in connection with the performance of the Exchange's index responsibilities. The Exchange believes, however, that the proposed amendment to Phlox Rule 1102 would make clear that the Exchange disclaims liability for negligent conduct, in addition to conduct beyond the Exchange's reasonable control, currently covered by Phlx Rule 1102A. The Exchange represents that other exchanges, including the American Stock Exchange

''(Amex''),[5] disclaim liability for negligent conduct in connection with their index operations. Finally, the Exchange acknowledges that Phlx Rule 1102A cannot be relied upon by the Exchange to limit liability to non-members or for any intentional or negligent violation of federal securities laws.

## III. Discussion

For the reasons discussed below, 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 exchange. In particular, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act[6] that rules of an exchange be designed to facilitate transactions in securities.[7]

The Commission notes that the proposed rule change is to the Amex's rule.[8] Further, the Commission notes that the proposed change cannot be used to limit the Phlx's liability to non-members for any intentional or negligent violations of the federal securities laws. The Commission believes that the prosed change should serve to facilitate transactions in securities. In this regard, the Commission believes that the proposal will encourage the Exchange continue to make options in its proprietary indices available to investors.

## IV. Conclusion

*It is therefore ordered,* pursuant to section 19(2) of the Act,[9] that the proposed rule change (SR–Phlx–00–74) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–29182 Filed 11–14–00; 8:45 am]

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[3] *See* Securities Exchange Act Release No. 43292 (September 14, 2000), 64 FR 54719.

[4] Examples of the Exchange's proprietary indices Computer Box Maker Index (BMX), Phlx Oil Service Index (OSX), Gold-Sliver Index (XAU), National Over-the-Counter Index (XOC), Phlx Forest and Paper Products Sector Index (FPP), Over-the-Counter Prime Index (OTX), Utility Index (UTY), Semiconductor Index (SOX), TheStreet.com Internet Sector Index (DOT) and Wireless Telecom Sector Index (YLS).

[5] *See* Amex Rule 902C.

[6] 15 U.S.C. 78f(b)(5).

[7] 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).

[8] *See supra* note 5.

[9] 15 U.S.C. 78s(b)2.

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43515; File No. SR–Phlx–99–32]

**Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Maximum Size of Option Orders That May Be Executed Automatically**

November 3, 2000.

### I. Introduction

On August 23, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 amending its rules regarding the automatic execution of options orders to increase the maximum number of contracts eligible to be executed on the Exchange's automatic execution system (''AUTO–X'') from fifty contracts to seventy-five contracts. On September 27, 1999 and January 23, 2000, respectively, the Phlx submitted Amendments Nos. 1 and 2 to the proposed rule change.[3] Notice of the proposal was published in the **Federal Register** on June 21, 2000.[4] The Commission received no comments on the proposal. This order approves the proposal.

### II. Description of the Proposal

The AUTO–X feature of the Exchange's Automated Options Market System (''AUTOM'') automatically executes public customer market and marketable limit orders in options at the Exchange's displayed bid or offer. Generally, public customer market and marketable limit orders of up to fifty contacts may be automatically executed through AUTO–X.[5] Orders are routed

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange designated the proposal as filed pursuant to Section 19(b)(2) of the Act. The Exchange originally filed the proposal pursuant to Section 19(b)(3)(A). *See* Letter from Edith Hallahan, Deputy General Counsel, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission, dated September 23, 1999 (''Amendment No. 1''). In Amendment No. 2, the Exchange deleted a provision in the original proposal that restricted the increase in maximum order size eligibility to 100 options. *See* Letter from Nandita Yagnik, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission, dated January 20, 2000 (''Amendment No. 2'').

[4] *See* Securities Exchange Act Release No. 42932 (June 13, 2000), 65 FR 38621 (June 21, 2000).

[5] *See* Securities Exchange Act Release No. 36601 (December 18, 1995), 60 FR 66817 (December 26,