

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**

Currently, the Exchange imposes a flat \$0.35 per contract for broker-dealer transactions not executed via the AUTO-X feature of AUTOM,<sup>6</sup> the Exchange's automated options trading system. The intent of the present fee change is to add breakpoints above which the per contract charge for broker-dealer transactions will be reduced, thereby potentially attracting additional options business to the Exchange, particularly large transactions. For example, under the proposal (i) a transaction of 1,700 contracts will be charged \$0.35 per contract, (ii) a transaction of 2,500 contracts will be charged \$0.25 per contract for all contracts, and (iii) a transaction of 3,500 option contracts will be charged \$0.25 for each of the first 3,000 contracts and \$0.20 for each of the remaining 500 contracts.<sup>7</sup> Footnote 10 of the Exchange's fee schedule is also being amended to change the term "orders" to "transactions."

The purpose of the proposed rule change is to generate additional revenue for the Exchange by attracting additional order flow through lowering the cost of executing certain large block equity option transactions. The proposed rule change should also make the Exchange's fees for trading equity option contracts on the Phlx more competitive with other options exchanges.

<sup>6</sup> AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. See Exchange Rule 1080.

<sup>7</sup> Of course, the contra-side to a transaction may also be subject to transaction and other charges.

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange believes the proposal is reasonable and equitable because it decreases transaction costs for broker-dealers executing equity options transactions on the Exchange.

*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 foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and rule 19b-4(f)(2) thereunder.<sup>11</sup> 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 purpose of the Act.

**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

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78(s)(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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-2003-26 and should be submitted by May 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 03-10377 Filed 4-25-03; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47714; File No. SR-Phlx-2003-25]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Automatic Price Improvement for Buy Orders in Securities Exempt for the Short Sale Rule**

April 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 3, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Phlx. 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 proposes to amend Supplementary Material .07 to Phlx rule 229 to modify the Exchange's Automatic Price Improvement ("API") program to allow specialists to choose to improve buy orders in securities that are exempted from or otherwise not subject to rule 10a-1 under the Act<sup>3</sup> (the "Short Sale rule").

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.10a-1.

The text of the proposed rule change is set forth below. Additions are in italics. Deletions are in brackets.

**Rule 229. Philadelphia Stock Exchange Automated Communication and Execution System (PACE)**

\* \* \* \* \*

**Supplementary Material**

\* \* \* \* \*

.01-.06 No Change

.07 (a)-(b) No Change

(c) Price Improvement for PACE Orders

(i) Automatic Price Improvement—Where the specialist voluntarily agrees to provide automatic price improvement to all customers and all eligible market orders in a security, automatically executable market and marketable limit orders in New York Stock Exchange and American Stock Exchange listed securities received through PACE for 599 shares or less shall be provided with automatic price improvement from the PACE Quote when received either \$.01 or a percentage of the PACE Quote when the order is received for equities trading in decimals beginning at 9:30 a.m., except where:

(A) A buy order would be improved to a price less than the last sale (*except as provided in (F) below*) or a sell order would be improved to a price higher than the last sale (except as provided in (E) below); or

(B) A buy order would be improved to the last sale price which is a downtick (*except as provided in (F) below*) or a sell order would be improved to the last sale price which is an uptick (except as provided in (E) below). The PACE System will determine whether the last sale price is a downtick or an uptick. The [Pace] PACE System does not recognize changes from the previous day's close.

In these situations, the order is not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote. A specialist may voluntarily agree to provide automatic price improvement to larger orders in a particular security to all customers under this provision.

A specialist may choose to provide automatic price improvement of: (i) \$.01 where the PACE Quote is either \$.05 or greater, or \$.03 or greater, or (ii) where the PACE Quote is \$.02 or greater, a percentage of the PACE Quote when the order is received, up to 50%, rounded to the nearest penny, and at least \$.01, in a particular security to all customers.

(C) Automatic price improvement will not occur for odd-lot orders, nor where the execution price before or after the

application of automatic price improvement would be outside the primary market high/low range for the day, if so elected by the entering member organization.

(D) The POES window of Supplementary Material .05 above does not apply where an order is subject to automatic price improvement or manual price protection.

(E) Sell Order Enhancement I—A specialist may choose to give automatic price improvement to all sell orders of 100 shares or more, as determined by the specialist, in a particular security which would be improved to the last sale on an uptick; or

Sell Order Enhancement II—A specialist may choose to give automatic price improvement to all sell orders of 100 shares or more, as determined by the specialist, in a particular security which would be improved to a price higher than the last sale.

(F) *Buy Order Enhancement—A specialist may choose to give automatic price improvement to all buy orders, as determined by the specialist, in any security that is exempted from or otherwise not subject to Securities Exchange Act rule 10a-1.*

.08-.22 No Change.

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**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 Phlx 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 expand the number of orders eligible to receive price improvement by allowing Exchange equity specialists to offer API to all buy orders in securities that are exempted from or otherwise not subject to the Short Sale rule.<sup>4</sup> The Exchange's API

<sup>4</sup> The Exchange also proposes to correct a typographical error in the presentation of the word "PACE" in Supplementary Material .07(c)(i)(B) to Phlx rule 229.

program allows specialists to provide automatic price improvement to automatically executable market and marketable limit orders in New York Stock Exchange, Inc. and American Stock Exchange LLC listed securities received through Phlx's Automated Communication and Execution System ("PACE")<sup>5</sup> for 599 shares or less of either \$.01 or a percentage of the PACE Quote when the order is received.<sup>6</sup> Specialists may choose to offer API in each individual specialty security. If API is offered in an individual security, then it must offer it to all customers and all eligible market orders in that security.

Currently, API is not available to certain buy orders if the execution price of those buy orders would be less than the last sale or at the last sale, provided such execution would create a downtick.<sup>7</sup> The purpose of these restrictions is to prevent the possibility of a violation of the Short Sale rule on the part of a specialist selling against the buy order. In securities that are exempted from or otherwise not subject to the Short Sale rule (such as many of the Index Fund Shares, Trust Shares and Trust Issued Receipts that are traded or may be traded on the Phlx),<sup>8</sup> the Exchange believes that there is no possibility of a violation of the Short Sale rule by the specialist when selling to buy orders in these securities.<sup>9</sup> By allowing API for buy orders in these securities, the Exchange believes that customers should receive more opportunities for price improvement. While specialists in such securities may choose to give price improvement to all such buy orders under this proposal, this is a voluntary additional feature of API. The Exchange states that participation in the API program will remain voluntary, as is participation in PACE.<sup>10</sup>

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the Act, including section 6(b) of the

<sup>5</sup> PACE is the Exchange's automated order routing, delivery, execution and reporting system for listed securities. See Phlx rule 229.

<sup>6</sup> See Supplementary Material .07 to Phlx rule 229.

<sup>7</sup> See Supplementary Material .07(c)(i)(A) to Phlx rule 229.

<sup>8</sup> See Phlx rule 803(i)-(j), (l).

<sup>9</sup> The Exchange states that it would issue a regulatory circular to its members informing them of which securities are exempt from the Short Sale rule, and thus available for API under the proposed rule change. Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Christopher Solgan, Attorney, Division, Commission, on April 16, 2003.

<sup>10</sup> See Phlx rule 229.

Act,<sup>11</sup> and furthers the objectives of section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is intended to promote just and equitable principles of trade, 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 by expanding the opportunity for price improvement.

*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**

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 Phlx 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 Phlx. All submissions should refer to File No. SR-Phlx-2003-25 and should be submitted by May 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 03-10380 Filed 4-25-03; 8:45 am]

**BILLING CODE 8010-01-P**

**SMALL BUSINESS ADMINISTRATION**

**Main Street Mezzanine Fund, L.P.  
License No. 06/06-0326; Notice  
Seeking Exemption Under Section 312  
of the Small Business Investment Act,  
Conflicts of Interest**

Notice is hereby given that Main Street Mezzanine Fund, L.P., 1300 Post Oak Boulevard, Houston, Texas 77056, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730 (2000)). Main Street Mezzanine Fund, L.P. proposes to provide a debt-with-warrants financing to Avail Consulting, LLC, 2929 Allen Parkway, Houston, Texas.

The financing is brought within the purview of section 107.730(e) of the Regulations inasmuch as a Principal of Main Street Mezzanine Fund, L.P. also serves on the Board of Directors of Avail Consulting, LLC. Avail Consulting, LLC is therefore considered an Associate of Main Street Mezzanine Fund, L.P., as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction within 30 days of the date of this notice to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: April 16, 2003.

**Jeffrey D. Pierson,**

*Associate Administrator for Investment.*

[FR Doc. 03-10287 Filed 4-25-03; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**Membership in the National Parks  
Overflights Advisory Group**

**AGENCIES:** Federal Aviation Administration, DOT and National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service (NPS) and the Federal Aviation Administration (FAA), as required by the National Parks Air Tour Management Act of 2000, established the National Parks Overflights Advisory Group (NPOAG) in March 2001. The NPOAG was formed to provide continuing advice and counsel with respect to commercial air tour operations over and near national parks. This notice informs the public of a vacancy on the NPOAG for a member representing air tour operator interests and invites interested persons to apply to fill the vacancy.

**FOR FURTHER INFORMATION CONTACT:**

Barry Brayer, Executive Resource Staff, Western Pacific Region Headquarters, 15000 Aviation Blvd., Hawthorne, CA 90250, telephone: (310) 725-3800, E-mail: [Barry.Brayer@faa.gov](mailto:Barry.Brayer@faa.gov), or Howie Thompson, Natural Sounds Program, National Park Service, 12795 W. Alameda Parkway, Denver, Colorado, 80225, telephone: (303) 969-2461.

**DATES:** Persons interested in serving on the advisory group should contact Mr. Brayer or Mr. Thompson on or before May 19, 2003.

**SUPPLEMENTARY INFORMATION:**

**Background**

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Pub. L. 106-181. The Act required the establishment of the advisory group within 1 year after its enactment. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator and the Director (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

The advisory group provides "advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 17 CFR 200.30-3(a)(12).