

makes non-substantive cosmetic changes to correct the inaccuracies in the rule language inadvertently made in previous proposed rule changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act¹³ in general, and in particular, with section 6(b)(5),¹⁴ in that it promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitates transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest by widely extending automated price improvement to equities traded in decimals.

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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ 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.¹⁷

The Exchange has requested that the Commission finds good cause to waive the pre-filing notice requirement, and to designate the proposal to be both effective and operative upon filing because such designation is consistent with the protection of investors and the public interest. Waiver of these requirements will allow the pilot program to continue uninterrupted through November 5, 2001. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.¹⁸

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-2001-67, and should be submitted by September 7, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

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have commenced on August 7, 2001, the date the Phlx filed Amendment No. 1.

¹⁸ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44687; File No. SR-Phlx-2001-58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Establishing Obligations of AUTOM Order Entry Firms and Users and Prohibiting Entry of Multiple Orders Via AUTOM for the Account(s) of the Same Owner of Beneficial Interest for the Same Option Within 15 Seconds

August 13, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on June 8, 2001, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On July 13, 2001, the Phlx submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, has been filed by the Phlx as a "non-controversial" rule change under Rule 19b-4(f)(6)⁴ under the Act. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market ("AUTOM") and Automatic Execution System ("AUTO-X"),⁵ to define an

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Edith Hallahan, First Vice President & Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 12, 2001 ("Amendment No. 1"). In Amendment No. 1, Phlx made a change to the proposed rule language. Specifically, Phlx removed the word "issue" from Phlx Rule 1080(c)(ii)(B)(3). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on July 13, 2001, the date the Phlx filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ AUTOM is the Exchange's electronic order delivery 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

Continued

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ For purposes of calculating the abrogation date, the Commission considers the 60-day period to

“Order Entry Firm” as a member organization of the Exchange that is able to route orders to AUTOM and to define a “User” as any person or firm that obtains access to AUTO-X through an Order Entry Firm.

The proposed rule change, as amended, would also impose certain obligations on Order Entry Firms, specifically to: (1) Follow applicable Exchange rules and procedures; (2) provide written notice to all Users regarding the proper use of AUTO-X; and (3) prohibit Order Entry Firms from either entering or permitting the entry of multiple orders in call options and/or put options for the same option within any 15-second period for an account or accounts of the same beneficial owner.

Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)

(a)–(b) No change.

(c) AUTO-X—AUTO-X is a feature of AUTOM that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO-X automatically executes eligible orders using the Exchange disseminated quotation and then automatically routes execution reports to the originating member organization.

AUTOM orders not eligible for AUTO-X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO-X is not engaged. An order may also be executed partially by AUTO-X and partially manually.

The Options Committee may for any period restrict the use of AUTO-X on the Exchange in any option or series. Currently, orders up to 100 contracts, subject to the approval of the Options Committee, are eligible for AUTO-X.

The Options Committee may, in its discretion, increase the size 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 Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Securities Act of 1934.

(i) No change.

(ii) *Order entry firms and Users*⁶

(A) *Definitions*

(1) *The term “Order Entry Firm” means a member organization of the Exchange that is able to route orders to AUTOM.*

(2) *The term “User” means any person or firm that obtains access to AUTO-X through an Order Entry Firm.*

(B) *Obligations of Order Entry Firms. Order Entry Firms shall:*

(1) *Comply with all applicable Exchange options trading rules and procedures;*

(2) *Provide written notice to all users regarding the proper use of AUTO-X; and*

(3) *Neither enter nor permit the entry of multiple orders in call options and/or put options in the same option within any 15-second period for an account or accounts of the same beneficial owner.*

* * * * *

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 Phlx included statements concerning the purpose of and basis for the proposed rule change, as amended, 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, as amended, is to protect investors and other market participants from the potential negative consequences that might result from Order Entry Firms engaging in

prohibited conduct. A further purpose is to ensure that an Exchange member that provides access to AUTO-X to its customers would ultimately be responsible for the orders that are entered by its customers.

The proposed amendments to Rule 1080(c), codifying and defining the terms “User” and “Order Entry Firm” are intended to create definitions of AUTOM and AUTO-X participants and to help define and clarify the rights and obligations of AUTOM and AUTO-X participants currently, and in possible proposed Exchange rules and policies concerning such participants in the future. The instant proposed rule change applies these terms in proposed Rule 1080(c)(ii)(B), which sets forth obligations of Order entry firms.

Proposed Rule 1080(c)(ii)(B) would require Order Entry firms to comply with certain requirements. Specifically, the proposed rule would require Order Entry Firms to comply with all applicable Exchange options trading rules and procedures and to provide written notice to all Users regarding the proper use of AUTO-X. In addition, the proposed rule would prohibit Order Entry Firms from either entering or permitting the entry of multiple orders in call options and/or put options in the same option within any 15-second period for an account or accounts of the same beneficial owner.

The purpose of proposed Rule 1080(c)(ii)(B) is to make explicit the responsibilities and requirements of Order Entry Firms. In addition to the compliance and written notice provisions, proposed Rule 1080(c)(ii)(B)(3) would place a specific prohibition against Order Entry Firms entering or permitting the entry of orders in call options and/or put options in the same option within any 15-second period for an account or accounts of the same beneficial owner. The Exchange believes that the establishment of a prohibition on members and member organizations entering or permitting the entry of multiple orders from the account or accounts of the same beneficial owner within any 15-second period should add certainty and consistency to the enforcement of the Rule and should provide clarity as to what conduct violates the Rule.⁷

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent

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.

⁶ This section has been renumbered from Rule 1080(c)(vi) to Rule 1080(c)(ii). Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Gordon Fuller, Counsel to the Assistant Director, Division, Commission, and Frank N. Genco, Attorney Advisor, Division, Commission, on June 22, 2001.

⁷ In this regard, the Commission notes that the Exchange may not take punitive action against the customer of a particular Order Entry Firm in the event that the Order Entry Firm violates Rule 1080(c)(ii)(B)(3).

with Section 6 of the Act⁸ in general, and with Section 6(b)(5) of the Act⁹ specifically, in that it is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade by providing AUTOM Users and Order Entry Firms with specific requirements concerning AUTO-X and multiple orders for the account or accounts of the same beneficial owner, and by providing Users and Order Entry Firms with a specific description of conduct that violates the rule.

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

The Phlx does not believe that the proposed rule change, as amended, 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

Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change, as amended,¹⁰ has become effective pursuant to Section 19(b)(3)(A) of the

Act¹¹ and Rule 19b-4(f)(6)¹² thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx seeks to have the proposed rule change, as amended, become operative immediately in order to remain competitive with other exchanges with similar rules in effect.¹³

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, operative as of July 13, 2001.¹⁴ The Commission notes that the proposed rule change, as amended, is identical in all material respects to the rule of another exchange that the Commission has already noticed for public comment and recently approved and the proposed rule change raises no new issues.¹⁵ At any time within 60 days of the filing of the proposed rule change, as amended, 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.¹⁶

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 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-2001-58 and should be submitted by September 7, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44653; File No. SR-Phlx-2001-70]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending the Pilot Program for Exchange Rule 98, Emergency Committee Until November 30, 2001

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 July 27, 2001, 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 is proposing to extend the pilot program period for Rule 98, Emergency Committee until November

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated May 30, 2001 ("Pre-Filing Notice"). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ See Pre-Filing Notice.

¹⁴ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ See, e.g., Securities Exchange Act Release No. 44104 (March 26, 2001), 66 FR 18127 (April 5, 2001) (order approving File No. SR-CBOE-00-47).

¹⁶ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78b(3)(C).

¹⁷ 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 filed the pre-filing notice required by Rule 19b-4(f)(6) by filing a written description of the proposed rule change and the text of the proposed rule change on July 20, 2001.