

c. Change-of-address information on magnetic tape at the National Customer Support Center (National Change-of-Address File) is retained for 36 months from effective date.

d. Internet change-of-address and related service records are kept on the online disks for 6 months from the execution date of the requests and archived to offline disks or tapes for an additional 13 months. At the end of that period, the records on offline disks or tapes are erased.

e. Postal customer service records are kept on the online disks for 6 months from the closure date of the request and archived to offline disks or tapes for an additional 7 months. At the end of that period, the records on offline disks or tapes are erased.

f. Outside service provider records are kept on the online disks for 3 months from the date of service termination and archived to offline disks or tapes for an additional 10 months. At the end of that period, the records on offline disks or tapes are erased.

g. Records saved at the customer's option are maintained until the customer decides to delete the previous transaction records or the account is disabled for inactivity. The customer can choose to modify saved records at any time, and the choice will be executed immediately. An erased customer record shall not be recovered or recalled.

h. Internet site usage records are kept on the online disks for 12 months and archived to offline disks or tapes for an additional 13 months. At the end of the period, the records on offline disks or tapes are erased.

#### RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; service providers; and providers of online identity validation.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00-16253 Filed 6-27-00; 8:45 am]

BILLING CODE 7710-12-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42964; File No. SR-Amex-00-30].

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Allocation of, and Participation in, Options and Index Share Trades

June 20, 2000

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 May 30, 2000, the American Stock Exchange LLC ("Amex" 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 the Exchange. 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 Amex proposes to codify in Rule 950(d) Commentary .05 current practices regarding the allocation of, and participation in, option and index share trades executed on the Exchange by registered options traders and specialists.

#### 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

Since the inception of options trading at the Exchange in 1975, both specialists and registered options traders ("traders") have had the responsibility of making markets in options. In

addition, although index shares, portfolio depositary receipts, and trust issued receipts such as SPDRS, DIAMONDS, NASDAQ 100 shares and HOLDRs are equity securities listed and traded under the Exchange's equity rules, they have some of the characteristics of "derivative products," and thus registered options traders are eligible for, and have been assisting specialists in, making markets in these products as well.

The Exchange's rules require that both specialists' and traders' transactions should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market and that specialists and traders should not enter into transactions or make bids or offers that are inconsistent with such a course of dealing.<sup>3</sup> Specialists and traders shall engage, to a reasonable degree under the existing circumstances, in dealings for their own accounts when there exists a lack of price continuity, a temporary disparity between the supply of and demand for options contracts of a particular series, or a temporary distortion of the price relationships between option contracts of the same class.<sup>4</sup> The Exchange notes that the Commission stated in its Order announcing the effectiveness of the Exchange's plan to list and trade options that registered floor traders on the Amex "will be expected to trade in a way *assists* the specialist in maintaining a fair and orderly market. \* \* \*"<sup>5</sup>

The Amex notes that specialists do, however, have additional obligations, which include, among other things, the obligation to (1) Assure that disseminated market quotations are accurate; (2) assure that each disseminated market quotation in appointed options classes shall be honored up to ten contracts, or such other minimum number as set from time to time by the Exchange; (3) determine any formula for generating the automatically updated market quotations and disclosing the elements of the formula to the members of the trading crowd; (4) be present at the trading post throughout every business day; (5) participate at all times in the automated execution system for each assigned option class; and (6) resolve trading disputes, subject to Floor

<sup>3</sup> See Amex Rule 170 (concerning specialists)—made applicable to options trading by Rule 950(n)—and rule 958 (concerning registered traders).

<sup>4</sup> *Id.*

<sup>5</sup> See Securities Exchange Act Release No. 11144 (December 19, 1974), 40 FR 3258 (January 20, 1975) (emphasis added).

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

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

Official review upon the request of any party to the dispute.<sup>6</sup>

The Exchange represents that in the course of making markets, specialists are often on parity with registered options traders; that is, bidding and offering simultaneously to provide liquidity. Amex Rule 126—made applicable to options trading by Amex Rule 950(d)—provides that when bids (offers) are made simultaneously, all such bids (offers) are on parity, and any securities sold (bought) in execution of

such bids (offers) shall be divided as equally as possible between those specialists and traders on parity. Over the years, it has been recognized by the Exchange as well as by the registered traders and specialists, that, given their role, specialists should be entitled to a greater than equal share when on parity with registered traders. As a result, a practice has developed in the trading crowds for many option classes and index shares to give the specialist a greater than equal share when on parity

with registered options traders. The Exchange now seeks to codify this practice.

The Exchange proposes to adopt commentary .05 to Rule 950(d), which would provide for a specialist to receive a specified participation in the number of securities executed, which would vary depending upon the number of traders on parity. The distribution of securities between the specialist and the traders on parity would be as follows:

| Number of traders on parity | Approximate number of securities allocated to the specialist | Approximate number of securities allocated to the traders (as a group) |
|-----------------------------|--------------------------------------------------------------|------------------------------------------------------------------------|
| 1 .....                     | 60% .....                                                    | 40%                                                                    |
| 2-4 .....                   | 40 .....                                                     | 60                                                                     |
| 5-7 .....                   | 30 .....                                                     | 70                                                                     |
| 8-15 .....                  | 25 .....                                                     | 75                                                                     |
| 16 or more .....            | 20 .....                                                     | 80                                                                     |

The Exchange emphasizes that the above percentages would apply only when the specialist and/or registered traders are on parity. In situations where a customer order is on parity with the specialist and registered traders, Exchange rules provide that the customer will not receive a lesser amount than the registered traders or specialist.<sup>7</sup> The Exchange notes, however, that a specialist cannot be on parity with an order for which he is acting as agent,<sup>8</sup> and registered traders (who never act as agents and trade only for their own accounts) cannot be on

parity with a customer when either establishing or increasing their position in the option.<sup>9</sup>

The proposed rule change would also codify the distribution of "Auto-Ex" executed options trades among specialists and registered traders.<sup>10</sup> The Exchange's "Auto-Ex" system automatically executes public customer market and marketable limit orders of a minimum of 10 and a maximum of 50 option contracts or less. Both specialist and registered options traders are contra-parties to the trades executed on the Auto-Ex system. Such trades are

automatically allocated on a rotating basis to the specialist and to each trader that has signed on to Auto-Ex.<sup>11</sup> If an Auto-Ex trade is greater than ten contracts, the Auto-Ex system divides the execution into lots of ten or fewer and allocates a lot to each Auto-Ex participant.<sup>12</sup> Each lot is considered a separate trade for purposes of allocating trades within Auto-Ex. Under the proposed rule change, the rotation would be designed to provide that Auto-Ex trades be allocated between the specialist and traders signed on to Auto-Ex in a given option class as follows:

| Number of traders signed on to Auto-Ex | Approximate number of trades allocated to the specialist throughout the day | Approximate number of trades allocated to trader(s) signed on to Auto-Ex throughout the day |
|----------------------------------------|-----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| 1 .....                                | 60% .....                                                                   | 40%                                                                                         |
| 2-4 .....                              | 40 .....                                                                    | 60                                                                                          |
| 5-7 .....                              | 30 .....                                                                    | 70                                                                                          |
| 8-15 .....                             | 25 .....                                                                    | 75                                                                                          |
| 16 or more .....                       | 20 .....                                                                    | 80                                                                                          |

The Exchange believes that it is appropriate to provide a greater participation to specialists because they have responsibilities and are subject to certain costs that registered traders do not. For example, specialists have a continuous obligation to the market, and must update and disseminate quotes in all securities, reflect all market interest in the displayed quotes, and act as a

contra-party on Auto-Ex at all times. In addition, connected with these responsibilities are fixed staffing costs committed to market making in a particular security whether it is actively traded or not and the costs associated with participating in educational and marketing functions to attract order flow.

In order to attract specialist units to the Exchange who are willing to accept these responsibilities, the Exchange believes it is necessary to provide specialists with a guaranteed participation. The Exchange also believes that it must provide these guarantees in order to be competitive with other options exchanges that currently offer enhanced participation to their specialists and select market

<sup>6</sup> These obligations are mandated by, or implicit in, various Amex trading rules and practices. Telephone conversation between Claire McGrath, Vice President and Special Counsel, Amex, and Ira L. Brandriss, Attorney, Division of Market Regulation, the Commission, on June 16, 2000.

<sup>7</sup> See, e.g., Amex Rule 126(e)(2).

<sup>8</sup> See Amex Rule 155.

<sup>9</sup> See Amex Rule 111, Commentary .07, made applicable to options trading by Amex Rule 950(c).

<sup>10</sup> The Exchange notes, however, that index shares, portfolio depositary receipts, and trust issued receipts are not executed through the Auto-Ex system.

<sup>11</sup> At the start of each trading day, the order in which trades are allocated to the specialist and

traders signed on to Auto-Ex is randomly determined.

<sup>12</sup> For example, an order for 25 contracts, in an option class for which orders of up to 50 contracts may be executed through Auto-Ex, would be executed in three trades—two trades of 10 each and one trade of five contracts.

makers.<sup>13</sup> The Exchange believes that guaranteed participation would also give specialists the ability to attract order flow to the Exchange and provide its customers with tighter, more competitive markets. As a result, the Exchange would be able to attract new specialist units and retain the services of existing units.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>14</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>15</sup> of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Amex does not believe that the proposed rule change will impose any 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 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 Exchange 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 the filing will also be available for inspection and copying at the principal offices of the Amex. All submissions should refer to File No. SR-Amex-00-30 and should be submitted by July 19, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-16305 Filed 6-27-00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42973; File No. SR-Phlx-00-43]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adopting Enhancements to the PACE Systems Automatic Price Improvement Feature**

June 21, 2000.

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 May 12, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>16</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.

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

The Phlx proposes to adopt a system change to the Exchange's Automatic Communication and Execution ("PACE") System Automatic Price Improvement ("API") feature and adopt Rule 229, Commentary .07(c)(i)(E) to provide specialists the ability to implement automatic price improvement to allow sell orders to improve to the last sale on an uptick and/or allow sell orders to improve to a price higher than the last sale ("Sell Order Enhancement features").

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### 1. Purpose

PACE is the Exchange's automated order routing and execution system on the equity trading floor. PACE accepts orders for automatic or manual execution in accordance with the provisions of Rule 229, which governs the PACE System and defines its parameters. The API features of the PACE System allows the specialist to voluntarily provide automatic price improvement to market and marketable limit orders to all customers in a security when the orders are 599 shares or less and the PACE quote<sup>3</sup> is 3/16 or 1/8 or greater.<sup>4</sup> When the API feature was first introduced, there were certain exceptions which prevented a sell order from being executed on the last sale if the last sale is an uptick and prevented a sell order from being executed at a price higher than the last sale.<sup>5</sup> In those situations, the order would be executed at the PACE quote.

The Exchange proposes to enhance the API feature to allow the specialist to voluntarily provide automatic price improvement to sell orders of a 100 shares or more, as determined by the specialist, in a particular security even when the sell order would be executed on the last sale and the last sale is an uptick ("Sell Order Enhancement I"). In addition, the Exchange also proposes to enhance the API feature to allow the specialist to voluntarily provide automatic price improvement to sell orders of 100 shares or more, as determined by the specialist, in a particular security when the improved

<sup>3</sup> The PACE quote means the best bid/ask quote among the American, Boston, Cincinnati, Chicago, Pacific, Philadelphia and New York Stock Exchanges. See Phlx rule 229.

<sup>4</sup> See Phlx Rule 229, Commentary .07(c)(i)

<sup>5</sup> See Phlx Rule 229, Commentary .07(c)(i)(A) and (B).

<sup>13</sup> See Chicago Board Options Exchange Rule 8.80; Pacific Exchange Rule 6.82; and Philadelphia Stock Exchange Rule 1014(g).

<sup>14</sup> 15 U.S.C. 78f(b).

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