

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45046; File No. SR-Phlx-2001-89]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to an Increase in the Maximum Guaranteed Size for Auto-X Eligible Orders in Options on the Nasdaq-100 Index Tracking Stock ("QQQ" from 100 Contracts to 250 Contracts

November 7, 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 September 27, 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 October 9, 2001, the Phlx filed Amendment No. 1 to the proposed rule change.³ 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 Phlx proposes to amend Exchange Rule 1080, "Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)," to increase its automatic execution guarantee for options overlying the QQQ⁴ from 100 contracts to 250 contracts.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 5, 2001 ("Amendment No. 1"). In Amendment No. 1, the Phlx changed the status of the proposal from a filing made pursuant to section 19(b)(3)(A) of the Act to a filing made pursuant to section 19(b)(2) of the Act.

⁴ The Phlx represents that Nasdaq-100, Nasdaq-100 Index ("Index"), Nasdaq, The Nasdaq Stock Market, Nasdaq-100 Shares, Nasdaq-100 Trust, Nasdaq-100 Index Tracking Stock, and QQQ are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Phlx ("Licensee") pursuant to a License Agreement with Nasdaq. The Index determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust, or the beneficial owners of Nasdaq-100 Shares. The Phlx represents that Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for

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

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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. *With respect to options on the Nasdaq-100 Index Tracking Stock ("QQQ"), orders of up to 250 contracts 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 Exchange Act of 1934.

(c)(i)(A)-(E) No change.

(d)-(j) 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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any

determining, comprising or calculating the Index in the future.

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 Phlx proposes to increase the maximum order size eligibility for Auto-X in QQQ options from 100 contracts to 250 contracts. Under the rules of the Exchange, through AUTOM,⁵ orders are routed from member firms directly to the appropriate specialist on the trading floor. Of the public customer market and marketable limit orders routed through AUTOM, certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. These orders are automatically executed at the disseminated quotation price on the Exchange and reported back to the originating firm.⁶

The Exchange represents that AUTO-X affords prompt and efficient automatic executions at the disseminated quotation price on the Exchange. Therefore, the Exchange believes that increasing automatic execution levels for eligible orders in QQQ options from 100 contracts to 250 contracts should provide the benefits of automatic execution to a larger number of customer orders. Further, the Exchange notes that this increase in the automatic execution levels in QQQ options should enable the Exchange to remain competitive for order flow with other exchanges that trade QQQ options.

The exchange notes that there are many safeguards incorporated into Exchange rules to ensure the appropriate handling of AUTO-X orders. For example, PHLX Rule 1080(f)(iii) states that the specialist is responsible for the remainder of an AUTOM order where a partial execution has occurred. Phlx Rule 1015 governs execution guarantees and requires the

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 routed to AUTOM's automatic execution feature, AUTO-X, if they are eligible for execution on AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Options orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

⁶ See Phlx Rule 1080(c).

trading crowd to ensure that public orders are filled at the best market to a minimum of the disseminated size. In addition, Phlx Options Floor Procedure Advice F-7 provides that the size of any disseminated bid or offer by the Exchange shall be equal to the AUTO-X guarantee for the quoted option and shall be firm, except that the disseminated size of bids and offers of limit orders on the book shall be 10 contracts and shall be firms, regardless of the actual size of the orders. Violations of any of these provisions could be referred to the Business Conduct Committee for disciplinary action.

The Wheel is a mechanism that allocates AUTO-X trades among specialists and Registered Options Traders ("ROTs").⁷ An ROT has discretion to participate on the Wheel to trade any option class to which he is assigned. An increase in the maximum AUTO-X order size in QQQ options does not prevent an ROT from declining to participate on the Wheel. Because the wheel rotates in two-lot to ten-lot increments depending upon the size of the order,⁸ no single ROT will be allocated the entire 250 contracts.

The Exchange also has procedures that permits a specialist to disengage AUTO-X in extraordinary circumstances.⁹ The Exchange represents that AUTOM users will be notified of such circumstances.

With respect to financial responsibility issues, the Exchange notes that it has a minimum net capital requirement respecting ROTs.¹⁰ Furthermore, an ROT's clearing firm performs risk management functions to ensure that the ROT has sufficient financial resources to cover positions throughout the day. In this regard, the function includes real-time monitoring of positions. The Exchange believes that clearing firm procedures address the issue of whether an ROT has the financial capability to support the Auto-X trading of orders in QQQ options as large as 250 contracts.

The Exchange believes that automatic execution of orders in QQQ options for up to 250 contracts should provide customers with quicker executions for a larger number of orders by providing automatic rather than manual executions, thereby reducing the number of orders subject to manual processing. The Exchange also believes

that increasing the AUTO-X maximum order size in QQQ options should not impose a significant burden on operation or capacity of the AUTOM system and will give the Exchange better means of competing with other options exchanges for order flow.

2. Statutory Basis

For the reasons stated above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by providing automatic executions to a larger number orders in QQQ options.

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 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, as amended, 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-2001-89 and should be submitted by December 6, 2001.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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DEPARTMENT OF STATE

[Public Notice 3840]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the seventeen letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663-2700).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to

⁷ Unlike ROTs, specialists are required to participate on the wheel. See Phlx Rule 1080(g).

⁸ See Exchange Options Floor Procedure Advice F-24(e).

⁹ See Phlx Rule 1080(e) and Exchange Options Floor Procedure Advice A-13.

¹⁰ See Phlx Rule 703.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 17 CFR 200.30-3(a)(12).