

eligible for the Enhanced Parity Split, the appeals procedures proposed by the Exchange adequately protect the due process rights of the specialist. The Commission believes that these criteria balance the competing interests of the Exchange and the 3D FCO specialist by ensuring regular review of specialist performance and that the specialist's due process rights are protected in cases where the Committee makes a determination that the Enhanced Parity Split should be denied.

Finally, the Commission notes that even though the Enhanced Parity Split will have a negative impact, in certain circumstances,<sup>14</sup> on customer orders for more than 100 contracts, the Commission believes that this does not raise significant regulatory concerns in the context of the 3D FCO market. The FCO market, in general, is dominated by institutions and sophisticated corporate investors who typically trade in large numbers of FCO contracts, *i.e.*, 100 contracts or more at a time. The Commission believes that non-institutional investors who participate in the FCO market generally enter into transactions for far fewer contracts. The Exchange's rules, as approved by the Commission, already acknowledge this distinction by affording time priority for trades that would otherwise be on parity only for customer orders for fewer than 100 contracts.<sup>15</sup> As a result, because the negative impact of the rule on customers will be limited substantially to institutions and sophisticated corporate FCO investors trading 3D FCOs, the Commission believes that the benefits of the proposal discussed above outweigh the negative impact of the rule change on this class of FCO customers.

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to allow the 3D FCO specialist to begin receiving the benefits of the Enhanced Parity Split without delay. The Commission notes that the appeal procedures provided in Amendment No. 1 are consistent with those available to equity and index option specialists who are denied the enhanced parity participation available to those specialists pursuant to prior

<sup>14</sup> The Enhanced Parity Split will have a negative impact on customer orders for 100 or more contracts only where the customer is on parity with the 3D FCO specialist and one or more other crowd participants. In cases where only a customer and the 3D FCO specialist are on parity, the Enhanced Parity Split will have no effect. See Amendment No. 2, *supra* note 6.

<sup>15</sup> See Phlx Rule 1014 (h) (i).

Commission approval orders.<sup>16</sup> Further, the Commission finds that the proposal in Amendment No. 1 to Rule 503 merely makes this rule consistent with Rule 1014 and therefore does not raise any regulatory issues that were not addressed when Rule 1014 was amended.<sup>17</sup> Finally, Amendment No. 2 merely clarifies the manner in which the Enhanced Parity Split will be applied. Accordingly, the Commission believes that Amendment No. 2 should serve to minimize the potential for confusion regarding the application of the proposed rule change.

Based on the foregoing, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 1 and 2 to the Phlx's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2. Persons making written submissions should fix six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are file 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 Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the File No. SR-Phlx-94-42 and should be submitted by January 30, 1995.

<sup>16</sup> See *supra* note 12. The Commission notes that equity and index options traded at the Exchange are assigned to specialists by the Exchange's Allocation Committee and that the Exchange's by-laws provide specific procedures regarding appeals of decisions by the Allocation Committee. See Phlx By-laws, Article XI, Section 11-1(c). Under this proposal, however, the FCO Committee will be making the determination to deny the Enhanced Parity Split to the 3D FCO specialist. As a result, the appeals process pursuant to this proposal will vary, procedurally, from that available to equity and index option specialists who are denied the enhanced parity splits available to those specialists. See Phlx By-laws, Article XI, Section 11-1(a). Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on December 8, 1994. Despite the procedural differences, the Commission believes that the appeal rights available to the 3D FCO specialist, as proposed herein, provide adequate due process protection to the 3D FCO specialist.

<sup>17</sup> See Exchange Act Release No. 35028, *supra* note 12.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-Phlx-94-42), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35183; File No. SR-Phlx-94-41]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Extension of the Automated Options Market ("AUTOM") Pilot Program**

December 30, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 21, 1994, 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 and II below, which items have been prepared by the Exchange. The Exchange subsequently filed Amendment No. 1 to the proposal on December 1, 1994.<sup>1</sup> 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 extend the Exchange's Automated Options Market ("AUTOM") pilot program until December 31, 1995. The text of the proposal is available at the Office of the Secretary, the Phlx, and the Commission.

<sup>18</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>19</sup> 17 CFR 200.30-3(a)(12) (1993).

<sup>1</sup> In Amendment No. 1, the Exchange requested accelerated approval of the proposed rule change. See Letter from Edith Hallahan, Special Counsel, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated December 1, 1994 ("Amendment No. 1").

## 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 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

AUTOM is the Exchange's electronic order routing, delivery, execution, and reporting system for equity and index options. AUTOM is an on-line system that allows electronic delivery of options orders from member firms directly to the appropriate specialists on the Phlx options trading floor, with electronic confirmation of order executions. Certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. AUTO-X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the Options Price Reporting Authority ("OPRA") and to the originating firm. Generally, the specialist is the contra-side to AUTO-X trades.<sup>2</sup> Those orders not eligible for AUTO-X are executed manually by the specialist, and, upon execution of the order, are entered into the Exchange's systems for reporting to OPRA and to the firm that placed the order.

The AUTOM system has operated on a pilot basis since 1988, when it was first approved by the Commission for market orders of up to five contracts for all exercise prices in the near-month covering 12 Phlx-traded equity options.<sup>3</sup> Since that time, AUTOM has been extended and amended several times.<sup>4</sup>

<sup>2</sup> See Securities Exchange Act Release No. 35033 (November 30, 1994), 59 FR 63152 (December 7, 1994) (order approving a "wheel" execution system to automatically assign the specialist and participating Registered Options traders, on a rotating basis, as the contra-side to AUTO-X trades).

<sup>3</sup> See Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988).

<sup>4</sup> See Securities Exchange Act Release Nos.: 25868 (June 30, 1988), 53 FR 25563 (July 7, 1988) (order extending the pilot program to include 25 additional equity options and extending the pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (December 20, 1988) (order extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (February 10,

The purpose of the proposed rule change is to extend the AUTOM pilot program until December 31, 1995. The Phlx believes that this extension of the pilot program should provide the Exchange, as well as the Commission, with additional time to study the effectiveness of AUTOM prior to either a further extension or permanent approval of the pilot program. During this extension, the Exchange intends to monitor the implementation of certain enhancements to AUTOM as well as to codify the entire pilot program as an Exchange rule.<sup>5</sup>

Generally, the Exchange believes that since the last extension of the pilot program,<sup>6</sup> AUTOM has functioned properly and efficiently, without any material problems reported by Phlx members of AUTOM users, and without significant malfunctions or operational failures.

The Exchange believes that AUTOM provides small customer option orders with the benefits of electronic delivery and reporting, while AUTO-X provides automatic executions as well. Accordingly, the Exchange believes that AUTOM increases the speed and efficiency of order delivery, execution and reporting. This, the Exchange believes, promotes both liquidity and fair and orderly markets. For these reasons, the Phlx believes that extending the AUTOM pilot program

1989) (order extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (January 18, 1990) (order extending pilot through June 30, 1990); 28265 (July 26, 1990), 55 FR 31274 (August 1, 1990) (order extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (March 21, 1991) (order extending pilot through December 31, 1991 and approving the use of AUTO-X as part of the AUTOM pilot program); 29662 (September 9, 1991), 56 FR 46816 (September 16, 1991) (order permitting AUTO-X orders up to 20 contracts in Duracell operations only); 29782 (October 3, 1991), 56 FR 51247 (October 10, 1991) (order permitting AUTO-X for all strike prices and expiration months); 29837 (October 18, 1991), 56 FR 55146 (October 24, 1991) (order extending pilot through December 31, 1993); 32000 (March 15, 1993), 58 FR 15168 (March 19, 1993) (order approving the delivery of orders for up to 100 contracts through AUTOM and execution of orders for up to 25 contracts through AUTO-X); 32906 (September 15, 1993), 58 FR 49345 (September 22, 1993) (order permitting AUTO-X orders up to 25 contracts in all equity options); 33405 (December 30, 1993), 59 FR 790 (January 6, 1994) (order extending pilot through December 31, 1994) ("Exchange Act Release No. 33405"); and 34920 (October 31, 1994), 59 FR 55510 (November 7, 1994) (order approving use of AUTOM and AUTO-X for index option orders).

<sup>5</sup> Separately, the Exchange is proposing to limit the eligibility of National Over-the-Counter Index options for execution through AUTO-X. See File No. SR-Phlx-94-60. Additionally, the Exchange is proposing to codify the types of orders eligible for AUTOM and AUTO-X. See File No. SR-Phlx-94-62. See also, *supra* note 2.

<sup>6</sup> See Exchange Act Release No. 33405, *Supra* note 4.

until December 31, 1995, is consistent with Section 6 of the Act, in general, and, Section 6(b)(5), the particular, in that the proposal is designed to promote just and equitable principles of trade, and to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with Section 11A(a)(1)(B) of the Act in that the AUTOM is intended to improve, through the use of new data processing and communications techniques, the efficiency with which transactions in Phlx equity and index options are executive. Further, the Exchange believes that AUTOM fosters competition among options exchanges, which have similar systems in place.

### (B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

### (C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received by the Exchange.

No written comments were either solicited or received by the Exchange.

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

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.<sup>7</sup>

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6 and 11A.<sup>8</sup> Specifically, the Commission continues to believe that the development and implementation of the AUTOM system provides for more efficient handling and reporting of orders in Phlx options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time.<sup>9</sup> The Commission also

<sup>7</sup> See Amendment No. 1, *supra* note 1.

<sup>8</sup> 15 U.S.C. §§ 78f and 78k-1 (1988).

<sup>9</sup> The Commission notes that in the last extension of the pilot program, the Commission stated that prior to granting permanent approval or any further extension of the pilot, the Phlx would be required to submit a full report: (1) describing certain system modifications then in progress by the Exchange and describing the effect those modifications have subsequently had on AUTOM; and (2) updating a report submitted by the Phlx dated November 24,

believes that the extension of the pilot program until December 31, 1995, will provide the Exchange with a better opportunity to further study the operation and effectiveness of the pilot program, and the proposed modifications to be implemented during the extension,<sup>10</sup> prior to either a further extension or permanent approval of the pilot program.<sup>11</sup>

The Commission further notes that the Exchange has represented that since the last extension of the pilot program,<sup>12</sup> AUTOM has functioned properly and efficiently, that no material problems have been reported by Phlx members or AUTOM users, and that AUTOM has not had significant malfunctions or operational failures.<sup>13</sup> Finally, because the pilot program is being extended without expansion of the scope of the pilot, the Commission does not believe that the capacity of the Exchange's automated systems will be adversely effected by this extension.<sup>14</sup>

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit

1993; in connection with the last extension of the pilot program. See Exchange Act Release No. 33405, *supra* note 4. The Phlx has filed the required reports in connection with the current request for an extension of the pilot program. See Letter from Gerald O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated December 14, 1994, and letter from Jack McCarthy, Vice President, Equity Options Trading Systems, Phlx, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated December 21, 1994 ("December 21 Letter").

<sup>10</sup> See *supra* note 5.

<sup>11</sup> Before granting permanent approval of the pilot program, the Commission expects the Phlx to submit a full report, on or before November 1, 1995, describing the operation of AUTOM during this extension and the effect of any modifications made to AUTOM system implemented during the extension. Additionally, the Phlx's AUTOM pilot report should include: (1) a description of the benefits provided by AUTOM; (2) the degree of AUTOM usage, including the number and size of the orders routed through AUTOM and the number and size of the orders executed automatically through the AUTO-X system; (3) the system capacity of AUTOM and AUTO-X; and (4) any problems the Exchange has encountered with the routing and execution features. The Commission also requests that the Phlx submit its request for either an extension or permanent approval of the pilot program on or before November 1, 1995.

<sup>12</sup> See Exchange Act Release No. 33405, *supra* note 4.

<sup>13</sup> Telephone conversation between Edith Hallahan, Special Counsel, Phlx, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on December 29, 1994.

<sup>14</sup> The Commission expects the Phlx to immediately notify the Commission of any and all developments during this extension of the pilot program having a material effect on the capacity of the Phlx's automated systems. See also, December 21 Letter, *supra* note 9.

the Phlx to continue the AUTOM pilot program on an uninterrupted basis. Specifically, the Commission believes that the Phlx's proposal to extend the AUTOM pilot program does not raise any new issues because it merely extends the pilot program as it is currently operating. Further, the Commission continues to believe that the pilot program is beneficial to maintaining the quality and efficiency of the Phlx's market. Finally, the Commission notes that there have been no adverse comments concerning the pilot program since its implementation. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 11A of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 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-94-41 and should be submitted by January 30, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-Phlx-94-41), as amended, is approved through December 31, 1995.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>15</sup> 15 U.S.C. § 78s(b)(2) (1982).

<sup>16</sup> 17 CFR 200.30-3(a)(12) (1993).

[Release No. 34-35188; File No. SR-Phlx-94-46]

#### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Regarding a Post Primary Trading Session

January 3, 1995.

#### I. Introduction

On October 3, 1994 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "commission"), 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> a proposed rule change to extend the close of trading on the Exchange's equity trading floor from 4:00 to 4:15 p.m., creating a new Post Primary Session ("PPS"). On November 25, 1994, the Phlx submitted Amendment No. 1 to the proposed rule change.<sup>3</sup>

The proposed rule change, as amended, was published for comment in Securities Exchange Act Release No. 35007 (November 25, 1994), 59 FR 61915 (December 2, 1994). No comments were received on the proposal.

Pursuant to the current Phlx Rule 101 (Hours of Business), trading in any equity security on the Exchange's equity floor ends at 4:00 p.m. The PPS, however, will extend these hours for an additional fifteen minutes. Thus, the hours of the Phlx's auction trading market will be extended from the current hours of 9:30 a.m. to 4:00 p.m. to the new hours of 9:30 a.m. to 4:15 p.m.

Under the Phlx's proposal to extend its trading hours, all Exchange rules applicable to floor trading during the Exchange's regular hours<sup>4</sup> will continue to apply to floor trading during the PPS, except that during the PPS, (1) orders that are designated "PPS" are eligible for execution, and (2) GTX orders are executable after the close of the PPS (i.e., GTX orders are executable after 4:15 p.m. instead of 4:00 p.m.). In order to facilitate the extension of trading, the

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1991).

<sup>3</sup> See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Glen Barrentine, Senior Counsel, Commission, dated November 23, 1994.

<sup>4</sup> "Regular" hours of trading excludes the after hours trading facility for GTX orders permissible pursuant to Phlx Rule 232(c). This Rule defines a "GTX" order as one that is good until cancelled, eligible for primary market protection based on volume that prints on the New York Stock Exchange ("NYSE") or American Stock Exchange ("Amex") after-hours trading session.