

affected by the irreconcilable material conflict.

5. The determination by the Board of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners.

Accordingly, Participating Insurance Companies will vote shares of a Portfolio held in their Separate Accounts in a manner consistent with timely voting instructions received from Variable Contract owners. Each Participating Insurance Company also will vote share of a Portfolio held in its Separate Accounts for which no timely voting instructions from Variable Contract owners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their Separate Accounts participating in a Portfolio calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in a Portfolio shall be a contractual obligation of all Participating Insurance Companies under their participation agreements.

7. The Trust will notify all Participants that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. The Trust shall disclose in its Prospectus that: (a) its shares may be offered to insurance company Separate Accounts that fund Variable Contracts of Participating Insurance Companies that may or may not be affiliated with one another, and to Qualified Plans; (b) because of differences of tax treatment or other considerations, the interests of various Variable Contract owners and Qualified Plan participants might at some time be in conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board regarding potential or existing conflicts, and all action of the Board with respect to determining the existence of a conflict, notifying Participants of a conflict, and determining any proposed action adequately remedies a conflict, will be properly recorded in the minutes or other appropriate records, and such

minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e-2 or Rule 6e-3(T) are amended, or Rule 6e-3 is adopted, to provided exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested, then the Portfolios and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6e-2 and Rule 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent such rules are applicable.

10. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Trust), and, in particular, the Trust will provide for meetings as required by applicable State law or the Act, including Section 16(c) of the 1940 Act (although the Trust is not one of the trusts described in that section) as well as with Section 16(a) and, if and when applicable, Section 16(b). Further, each Portfolio will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may adopt with respect thereto.

11. The Participants shall, at least annually, submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data upon reasonable request of the Board shall be a contractual obligation of all Participants under their participation agreements.

12. If a Qualified Plan becomes an owner of ten percent or more of the assets of a Portfolio, such Qualified Plan will execute a fund participation agreement with the Trust on the behalf of such Portfolio. A Qualified Plan shall execute an application containing an acknowledgement of this condition upon such Qualified Plan's initial purchase of the shares of any Portfolio.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions, in accordance with the standards of Section 6(c), are

appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-31238 Filed 12-22-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36601; File No. SR-PHLX-95-39]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Increasing the Maximum Size of Options Orders Eligible for Automatic Execution

December 18, 1995.

On August 21, 1995, 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"),¹ and Rule 19b-4 thereunder,² a proposed rule change to increase the maximum automatic execution ("AUTO-X") order size eligibility for public customer market and marketable limit orders for all equity and index options from 25 contracts to 50 contracts.

Notice of the proposed rule change was published for comment in the Federal Register on September 26, 1995.³ No comments were received on the proposal.⁴

Generally, public customer market and marketable limit orders for up to 25 option contracts are eligible for execution through the AUTO-X feature of AUTOM.⁵ The PHLX proposes to

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ See Securities Exchange Act Release No. 36248 (September 19, 1995), 60 FR 49653.

⁴ On December 13, 1995, the PHLX submitted a letter indicating that the Exchange's Automated Options Market ("AUTOM") system and AUTO-X have sufficient capacity to accommodate the proposed rule change. Specifically, the PHLX states that its equity and index option trading floor currently trades approximately 75,000 contracts per day; a small percentage of those orders are filled through AUTO-X. According to the PHLX, AUTOM currently is approximately 30% utilized during peak market activity and can easily support any additional volume associated with the proposal. See Letter from William H. Morgan, Vice President, Trading Systems, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision, Commission, dated December 12, 1995 ("December 12 Letter").

⁵ See Securities Exchange Act Release No. 32906 (September 15, 1993), 58 FR 49345 (September 22,

increase the maximum AUTO-X order size eligibility for public customer market and marketable limit orders for all equity and index options from 25 contracts to 50 contracts. Under the proposal, 50 contracts represents the maximum size of a permissible AUTO-X order, which is determined by the specialist in that option. Consistent with the PHLX's 10-up rule,⁶ the minimum size of the Exchange's AUTO-X guarantee is 10 contracts.

AUTOM, which has operated on a pilot basis since 1988 and was most recently extended through December 31, 1996,⁷ is the PHLX's electronic order

1993) (order approving File No. SR-PHLX-92-38). For USTOP 100 Index ("TPX") options, public customer market and marketable limit orders for up to 50 contracts are eligible for AUTO-X. See Securities Exchange Act Release No. 35781 (May 30, 1995), 60 FR 30131 (June 7, 1995) (File No. SR-PHLX-95-29). Orders for up to 500 contracts are eligible for AUTOM. See Securities Exchange Act Release No. 35782 (May 30, 1995), 60 FR 30136 (June 7, 1995) (order approving File No. SR-PHLX-95-30).

⁶ See PHLX Rule 1033(a), "Size of Bid/Offer and 10-up Guarantee."

⁷ See Securities Exchange Act Release No. 36582 (December 13, 1995) (order approving File No. SR-PHLX-95-78). See also Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988) (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR-PHLX-88-22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR-PHLX-88-33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR-PHLX-89-1, extending pilot through December 31, 1989); 27599 (January 9, 1990) 55 FR 1751 (order approving File No. SR-PHLX-89-03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR-PHLX-90-16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR-PHLX-90-34), extending pilot through December 31, 1991); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR-PHLX-90-03, extending pilot through December 31, 1993); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR-PHLX-90-57, extending pilot through December 31, 1994); 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR-PHLX-90-41, extending pilot through December 31, 1995); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR-PHLX-91-31, permitting AUTO-X orders up to 20 contracts in Duracell options only); 29837 (October 18, 1991), 56 FR 55146 (October 24, 1991) (order approving File No. SR-PHLX-93-33, increasing AUTO-X for equity options to 20 contracts); 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR-PHLX-93-57, extending pilot through December 31, 1994); 34920 (October 31, 1994), 59 FR 55510 (November 7, 1994) (File No. SR-PHLX-94-40, codifying use of AUTOM for index options); 35601 (April 13, 1995), 60 FR 19616 (File No. SR-PHLX-95-18, codifying the use of AUTOM for certain order types); 36429 (October 27, 1995), 60 FR 55874 (November 3, 1995) (File No. SR-PHLX-95-35, allowing broker-dealer USTOP 100 Index option orders to be routed through AUTOM); and 36467 (November 8, 1995), 60 FR 57615 (November 16, 1995) (order approving File No. SR-PHLX-95-33, limiting AUTO-X for National Over-the-Counter Index Options to series where the bid is \$10 or less).

routing, delivery, execution and reporting system for equity and index options. AUTOM is an online system that allows electronics delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor.

In 1990, AUTO-X was approved as part of the AUTOM pilot program.⁸ AUTO-X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO-X are handled manually by the specialist.

The PHLX believes that the proposal should improve the AUTOM system by offering the benefits of AUTO-X, including prompt and efficient automatic executions at the displayed price, to additional customer orders. The Exchange states that the proposed AUTO-X increase from a maximum of 25 to 50 contracts is in line with prior changes. For example, the PHLX notes that the Commission previously has approved other PHLX proposals to increase the maximum AUTO-X contract size limit.⁹

Further, the Exchange believes that it is appropriate to permit automatic executions of option orders up to 50 contracts for several reasons. First, the PHLX states that AUTO-X orders, although immediately reported with the best bid/offer as the execution price, may be subject to price improvement by the specialist, if a better bid/offer is available. For example, a superior Registered Options Trader ("ROT") bid/offer established immediately prior to the receipt of an AUTO-X order may not be disseminated in time to be matched with the AUTO-X order electronically but the superior bid/offer may be matched with the AUTO-X order through manual intervention by the specialist.¹⁰

Second, the PHLX notes that Exchange rules and policies contain safeguards designed to protect customers, as well as ROTs and specialists, in the event quotations are not up-to-date, not disseminating, or otherwise malfunctioning. For example, in extraordinary (fast) market conditions, quotations are disseminated

with an "F" once the 10-up guarantee on screen markets is suspended pursuant to Option Floor Procedure Advice ("Advice") F-10, "Extraordinary Market Conditions (Fast Markets)." ⁴ In addition, Advice A-13, "Auto Execution Engagement/Disengagement Responsibility," allows a specialist to disengage AUTO-X in extraordinary circumstances, upon approval by two floor officials. The PHLX believes that these provisions serve to protect the integrity of AUTO-X by preventing inaccurate executions.

Third, the Exchange notes that specialists have the flexibility to establish the AUTO-X guarantee size for each option up to the maximum permissible size. In addition, the Exchange's "Wheel" for electronically assigning AUTO-X participation (although not yet operational) is voluntary for ROTs and will provide executions in 10-lot increments.¹² Thus, the PHLX believes that increasing the maximum AUTO-X order size up to 50 contracts does not raise financial viability concerns because ROTs can choose whether to participate on the Wheel and because the Wheel assigns orders in 10-lot increments. With respect to the financial integrity of PHLX specialists and ROTs, the Exchange notes that it monitors compliance with PHLX Rules 703, "Financial Responsibility and Reporting," and 722, "Margin Accounts," on a regular basis.

The PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interests, by extending the benefits of AUTO-X to a larger number of customer orders.

The Commission finds that the proposed rule change is consistent with

¹¹ Under Advice F-10, when a fast market is in effect, displayed options quotes are not firm and the 10-up guarantee is not applicable, although specialists and trading crowds are required to use best efforts to update quotes and fill incoming orders in accordance with the 10-up rule.

¹² The Wheel is an automated mechanism for assigning specialists and ROTs, on a rotating basis, as contra-side participants for AUTO-X orders. Specialists must participate on the Wheel and ROTs may participate on the Wheel in assigned issues. On the Wheel, the specialist receives the first assignment of trades for the day in each respective option. Thereafter, the Wheel assigns trades to ROTs in an order standardized for that day on a random basis. Each 10 lot or order (whichever is smaller) constitutes an assignment. See Securities Exchange Act Release No. 35033 (November 30, 1994), 59 FR 63152 (December 7, 1994) (order approving File No. SR-PHLX-94-32).

⁸ See Securities Exchange Act Release No. 27599 (January 9, 1990), 55 FR 1751 (January 18, 1990) (order approving File No. SR-PHLX-89-03). In 1991, the Commission approved a PHLX proposal to extend AUTO-X to all equity options. See Securities Exchange Act Release No. 28978 (March 15, 1991), 56 FR 12050 (March 21, 1991) (order approving File No. SR-PHLX-90-34).

⁹ See, e.g., Securities Exchange Act Release No. 29837, *supra* note 7.

¹⁰ *But see* note 14 and accompanying text regarding the provision of meaningful opportunity for price improvement.

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.¹³ The Commission notes that the development and implementation to date of the AUTOM system has provided for more efficient handling and reporting of orders in PHLX equity and index options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time. The Commission does not object at this time to extending the benefits available through the use of an automated system to larger-size customer options orders of up to 50 contracts.

Public customers may benefit from the proposal because public customer orders for up to 50 option contracts may be executed automatically and guaranteed by the specialist at the displayed market quote. In addition, public customers will have the benefit or receiving immediate executions and nearly instantaneous confirmations for orders of up to 50 contracts.¹⁴ The increase in the AUTO-X feature for all equity and index options may also increase the depth and liquidity of the market for the options where the specialist chooses to fill orders to a depth of up to 50 contracts. The Commission notes, however, that AUTO-X currently, and as proposed, does not require an opportunity for price improvement on a systematic basis. The Commission expects the PHLX to examine the feasibility of modifying AUTO-X to provide a mechanism for price improvement on a systematic basis.¹⁵

The Commission also believes, based on representations by the Exchange,¹⁶ that expanding the order eligibility size of AUTO-X for all equity and index options to 50 contracts will not expose the PHLX's options markets or equity

markets to risk of failure or operational break-down. In particular, the Exchange represents that only a small percentage of total daily trades on the PHLX are filled through AUTO-X; in addition, the Exchange notes that, currently, AUTOM is approximately 30% utilized during peak market activity. The Exchange represents that AUTOM can easily support any volume associated with the proposal. In addition, since the AUTOM system is completely independent from the PHLX's Automated Communication and Execution ("PACE") system for routing and executing stock orders, neither AUTOM nor PACE should impact the other during periods of high volume.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-PHLX-95-39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

[FR Doc. 95-31219 Filed 12-22-95; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 12/15/95

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST-95-936.

Date filed: December 15, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC2 Reso/P 1873 dated December 1, 1995, Middle East-Africa Resolutions r-1—r19, Intended effective date: April 1, 1996, Necessary Government Action Date: no later than February 20, 1996.

Docket Number: OST-95-937.

Date filed: December 15, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC23 Reso/P 0724 dated December 1, 1995, Africa-TC3 Resos, Intended effective date: April 1, 1996, Necessary Government Action Date: no later than February 15, 1996.

Docket Number: OST-95-938.

Date filed: December 15, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC12 Telex Mail Vote 765, Mexico-Germany and Mid Atlantic-Germany fares, r-1—074aa r-2—074w,

Intended effective date: January 20, 1996.

Paulette V. Twine,

Chief Documentary Services Division.

[FR Doc. 95-31249 Filed 12-22-95; 8:45 am]

BILLING CODE 4910-62-P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending December 15, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-95-922.

Date filed: December 11, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 8, 1996.

Description: Application of Rio Air Express, S.A. dba Skyjet Brazil, requests Amendment of its Foreign Air Carrier Permit to transport belly-cargo and mail in combination with its charter passenger service between Brazil and the United States.

Docket Number: OST-95-923.

Date filed: December 11, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 8, 1996.

Description: Application of Virgin Atlantic Airways Limited, pursuant to U.S.C. Section 40109 and Subpart Q of the Regulations, requests amendment of its Foreign Air Carrier Permit, to authorize the following air transportation, in addition to scheduled combination air transportation of passengers, cargo, and mail between London, England (Heathrow) and San Francisco, California, for which Virgin Atlantic initially sought an amendment to its foreign air carrier permit on January 11, 1994:

(1) scheduled combination air transportation of passengers, cargo, and mail between London, England (Heathrow) and Washington, DC (Dulles); and

(2) scheduled combination air transportation of passengers, cargo, and

¹³ 15 U.S.C. 78f and 78k-1 (1988).

¹⁴ As noted above, the PHLX's rules will not require a specialist to guarantee AUTO-X orders to a depth of 50 contracts. Instead, the proposal will allow specialists to establish an AUTO-X guarantee for each option up to the permissible size of 50 contracts, with a minimum guarantee of 10 contracts required.

¹⁵ *CF*, Securities Exchange Act Release Nos. 36310 (September 29, 1995), 60 FR 52792 (October 10, 1995) (rule proposals and amendments to improve the handling and execution of customer orders); and 33894 (April 11, 1994), 59 FR 18429 (April 18, 1994) (order approving File No. SR-Amex-93-32, noting that limiting the automatic execution of orders for Hong Kong Index options to 50 contracts or less will ensure that larger orders are exposed to the floor for potential price improvement).

¹⁶ See December 12, Letter, *Supra* note 4.

¹⁷ 15 U.S.C. 78s(b)(2) (1982).

¹⁸ 17 CFR 200.30-3(a)(12) (1994).