

has expired. In addition to the problems caused by immediately cancelled orders, orders that are sent to ECNs with conditions imposed also create response difficulties for ECNs.¹⁴ Therefore, Nasdaq has proposed to prohibit members from entering conditional orders into SelectNet when those orders are preferenced to an ECN.¹⁵ The Commission temporarily approved Conduct Rule 3380(b), prohibiting the entry of conditional order preferenced to an ECN, to eliminate impediments to the operation of the linkage with ECNs. The Commission acknowledges that conditional preferenced orders involve difficult programming issues and that the ECNs have been unable to modify their systems to accept conditional orders via the SelectNet linkage. The Commission continues to believe that this impediment to the operation of the linkage should be avoided and therefore is approving Conduct Rule 3380(b) on a permanent basis.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD, and in particular Sections 15A(b)(6), 15A(b)(9), and 15A(b)(11). In addition, the Commission finds that the rule change is consistent with the Congressional objectives for the National Market System, set out in Section 11A of the Exchange Act, of achieving more efficient and effective market operations, fair competition among brokers and dealers, and the economically efficient execution of investor orders in the best market. The Commission further believes that allowing preferenced on broadcast orders to be entered into SelectNet and immediately cancelled impedes the operation of the Order Execution Rules.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (NASD-97-01) be and hereby is approved. The 10-second minimum life requirement for a preferenced order in SelectNet is effective immediately and the 10-second minimum life requirement for a broadcast order in SelectNet shall be effective July 7, 1997. The prohibition of

conditional orders preferenced to ECNs is effectively immediately.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-17669 Filed 7-7-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38786; File No. SR-NYSE-97-17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Exchange's Wireless Data Communications Initiatives

June 30, 1997.

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 May 28, 1997,¹ the New York Stock Exchange, Inc. ("NYSE" 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 self-regulatory organization. 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 modify certain aspects of its program for the use of wireless data communications technology that allows a member in a trading crowd or elsewhere on the trading floor to communicate with other locations on the floor by means of a hand-held wireless device.

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 self-regulatory organization 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

¹⁷ 17 CFR 200.30-3(a)(12) (1966).

¹ Amendment No. 1 was filed on June 17, 1997, the substance of which is incorporated into the notice. See letter from Steven J. Abrams, Attorney, Milbank, Tweed, Hadley & McCloy, to Heather Seidel, Attorney, Market Regulation, Commission, dated June 17, 1997 ("Amendment No. 1").

the places specified in Item IV below. The self-regulatory organization 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

In 1995, the Commission approved a proposed rule change of the Exchange² that allowed the Exchange to introduce wireless data communications technology onto the Exchange trading floor. The Exchange believes that such technology expedites, and makes more efficient, the process by which members receive and execute orders. The technology involves the floor-based use of wireless hand-held data communications devices. To effect that initiative, the Exchange undertook to develop and install a wireless data communications infrastructure on its floor. It determined to allow private vendors, as well as the Exchange itself, to offer hand-held device services to Exchange members.

As described at length in the 1995 Filing, the Exchange's plan has been to introduce the new technology in four phases:

(1) In Phase I, the Exchange supervised and monitored three "proof-of-concept" pilot programs on the floor of the Exchange.

(2) In Phase II, the Exchange monitored and supervised additional, more structured, pilot testing of independent wireless data communications services, including that offered by the Exchange.

(3) In Phase III, the Exchange will conduct on the floor a preproduction pilot test of its wireless data communications system infrastructure, will supervise the installation and testing of the infrastructure and will move its own wireless data communications system to the infrastructure. In addition, the Exchange will continue to allow pilot testing of private vendors' wireless data communications services.

(4) In Phase IV, the Exchange will direct the production rollout of the wireless data communications infrastructure and the migration of vendors to the infrastructure.

The Exchange had completed Phase I prior to the time of its submission of the 1995 Filing. Since then, the Exchange

² Securities Exchange Act Release No. 35931 (June 30, 1995), 60 FR 35767 (July 11, 1995) ("1995 Filing").

¹⁴ The Commission earlier this year approved an NASD Rule change to prohibit the entry of all-or-none orders in the Small Order Execution System. See Securities Exchange Act Release No. 38156 (January 10, 1997), 62 FR 2415 (January 16, 1997).

¹⁵ For example, an all or none order, an order subject to a minimum execution size above a normal unit or trading, or an order deemed non-negotiable.

¹⁶ 15 U.S.C. § 78s(b)(2) (1988).

has completed Phase II and recently entered into Phase III.

Specifically, the purposes of the proposed rule change are: (1) To modify the types of wireless data communications that the Exchange will permit over the infrastructure; (2) to clarify that a vendor cannot provide wireless data communications services to Exchange members unless it is a member organization of the Exchange; and (3) to introduce the forms of agreement and provisions pursuant to which the Exchange will allow vendors and member organizations to provide wireless data communications services to members on the trading floor of the Exchange in the production roll-out environment.

First, the Exchange proposes to modify the types of wireless communications permitted over the infrastructure. The 1995 Filing specified as follows:

A vendor's Phase II pilot program must restrict wireless data communications to communications between a hand-held device used by a member on the floor and a terminal in a floor booth location. The Exchange will prohibit all floor-based wireless data communications between any other points.

Exchange members have told the Exchange that adding communications between two hand-held devices located on the floor to the permitted uses of hand-held devices would make the Exchange's wireless data communications initiative far more useful.

The Exchange limited communications during the Phase II pilot programs to communications between a booth terminal and a floor-based hand-held device and will continue that limitation during Phase III pilot programs. However, the Exchange believes that the success of the pilot program experience justifies that ultimate addition of communications between two hand-held devices on the floor, both because of the efficiencies that such communications will permit and because the pilot testing has demonstrated that the Exchange's wireless data communications infrastructure has the capacity to accommodate those communications.

By permitting communications between two hand-held devices located at two different locations on the Exchange floor, the Exchange feels that it will expedite, and make more efficient, the communication of information among members on the trading floor. A member may rely on the information it receives on the floor through a hand-held wireless device to make trading decisions, without having

to rely on such conventional trading tools as paper tickets and telephones.

As during the pilot programs, the Exchange will continue to prohibit wireless data communications either from a booth terminal or from a location on the trading floor to a location off of the floor. However, the same as under the pilot programs, a member subscribing to a wireless data communications service, whether from the Exchange or from a private vendor, may effect communications between a floor booth terminal and a member's off-floor system in the same "wired" manner as it can today, subject to applicable rules and policies. In addition, the subscribing member's booth terminal may interface with the Exchange's Common Message Switch ("CMS") in order to allow the member to enter orders into the Exchange's SuperDOT System complex. That interface would not differ from today's booth/CMS interfaces and would be subject to existing CMS interface standards.

Next, the Exchange proposes to only provide access to its wireless communications infrastructure to vendors that are member organizations. The only vendors that participate in wireless data communications service pilot tests during Phases I and II were a member organization of the Exchange and a party affiliated with a member organization of the Exchange. The Exchange has determined that, because only member organizations are subject to the Exchange Constitution, Exchange Rules, and Exchange oversight, it will only provide access to its wireless data communications infrastructure to vendors that are member organizations.

The Exchange anticipates that some member organizations that are interested in vending those services will enter into contracts with non-member organizations (e.g., traditional wireless data device vendors that desire to function as agents or contractors of the member organization) and that those contracts will delegate many of the service functions to those other entities. The Exchange is willing to permit that use of agents and contractors, so long as the member organization remains responsible for the performance of those functions and guarantees the performance of the agents and contractors.

Additionally, the Exchange included as part of the 1995 Filing, a form of agreement (the "Pilot Program Vendor Form") pursuant to which the Exchange would allow vendors of wireless data communications services to provide those services to Exchange members for the purposes of the Phase I and Phase

II pilot testing. Now that the pilot testing period is completed, the Exchange has derived from the Pilot Program Vendor Form two forms of agreement that are designed for use by member organizations that wish to provide wireless data communications services to members in the Exchange's production roll-out wireless data communications environment. One of those forms (the "Associated Member Form") allows a member organization to provide such services to members that are officers, partners and employees of the member organization. The other form (the "Revised Vendor Form") allows a member organization to provide such services to other members.

The primary differences of substance between the Pilot Program Vendor Form and the Revised Vendor Form (a copy of which is attached to the filing as *Exhibit A*) are listed below. Because the Exchange will use the Revised Vendor Form in an environment in which the Exchange will already have completed the development and installation of its wireless data communications infrastructure, the Revised Vendor Form eliminates: (1) References to the creation and installation of the infrastructure; (2) permission to use radio bands other than that which the Exchange provides through its infrastructure; (3) a requirement that members migrate to the infrastructure once it becomes available; and (4) a limited Exchange obligation to support the communications equipment of private vendors.

Also, the Revised Vendor Form clarifies that only member organizations may vend wireless data communications services on the Exchange's floor, but allows the member organization to delegate functions to agents and contractors, so long as the member organization guarantees the performance of the agents and contractors. The Revised Vendor Form will allow communications between members using hand-held devices at two different locations on the trading floor, as well as between a member using a hand-held device on the floor and a member at a booth terminal, as the Exchange permitted in the pilot program.

In addition, the Exchange will have insisted that, because the Exchange limited the scope of the Phase I and II pilot programs and will similarly limit Phase III pilot programs, each participating vendor refrain from discriminating among the members to whom it was willing to provide its pilot service through the end of Phase III. However, the completion of the infrastructure means that the technology

necessary to allow every member to enjoy wireless data communications services will be available, whether from a vending member organization or from the Exchange. In Phase IV, the production roll-out phase, the Exchange will therefore allow vending member organizations to enter into such wireless data communications arrangements with members as they may see fit. For instance, a member organization may vend a wireless data communication service to Exchange members, but may offer preferential terms and conditions to members with which it is affiliated. As a result, the Revised Vendor Form will eliminate: (1) The several provisions found in the Pilot Program Vendor Form that require the vendor to provide wireless data communications services only on unbiased, non-discriminatory grounds; and (2) the provision that limits the scope of any pilot program to 25 members.

The Revised Vendor Form will eliminate the provision that prohibits a vendor from representing that it is the sole vendor of wireless data communications services on the Exchange floor, because the Exchange feels certain that all members will be aware that the Exchange and certain member organizations will provide service alternatives. Finally, because the Exchange will allow vendors to have access to the Exchange's infrastructure during Phase IV (unlike Phases I and II) and because the Exchange may not have the same degree of communication with vending member organizations throughout Phase IV as it has had during the earlier phases, it proposes to strengthen its contractual safeguards by adding to the Revised Vendor Form a provision that prohibits a vending member organization from introducing its service, or from modifying its equipment or transmission methodology, until the Exchange has seen the service or the modification operate satisfactorily. For similar reasons, the Revised Vendor Form grants the Exchange the right to test a service and related equipment.

The form of vendor agreement requires the vendor to prepare a description of its service for attachment to the form. *Attachment A* to the form sets forth the information that the Exchange requires the vendor to include in the service description. The Exchange proposes to eliminate, from that required information, information that completion of the infrastructure makes irrelevant. In addition, the Exchange proposes to add to those required items of information the vendor's method and location for storing devices when not in use. Furthermore, the Exchange

proposes to clarify that among the rules and regulations with which the vendor is required to comply are all health and safety standards.³

As an important element of the Pilot Program Vendor Form, the Exchange required a vendor of a Phase I or II pilot program to provide its service to a member only pursuant to a written contract with the member. The Exchange required that contract to govern six elements of the vendor-member relationship⁴ and to include certain provisions designed to protect the interests of the Exchange and its members. The Exchange set forth those requirements in an *Attachment B* to the Pilot Program Vendor Form. For the purposes of the Revised Vendor Form, the Exchange is proposing to amend those contract requirements in the manner set forth in *Attachment B* to *Exhibit A* (the "Revised Vendor-Member Agreement Terms"). The amendments: reflect the fact that the Exchange will now permit communications between members using hand-held devices at two different locations on the floor; remove the requirement that the vendor-member agreement must govern the six prescribed elements of the relationship; and remove the Exchange-imposed termination requirements for terminations by the vendor or the subscribing member.

For the production roll-out phase, the Exchange has prepared the Associated Member Form for use by a member organization that wishes to provide wireless data communications services on the Exchange's trading floor solely to officers, partners and employees of the member organization that are Exchange members.⁵

The Associated Member Form contains provisions that are almost identical in substance to those found in the Revised Vendor Form, except that the Associated Member Form requires the member organization to take responsibility for the actions of its members and to assure that its members will comply with all provisions of the Form as well as with relevant laws, rules and regulations. For that reason, the Exchange does not propose to

require the member organization to enter into an agreement with a subscriber to its wireless data communications service if the subscriber is an Exchange member that is an officer, partner or employee of the member organization. As a result, the Exchange does not propose to impose on the member organization a set of terms and conditions—for application between the member organization and its members—that parallel those set forth in *Exhibit B* to the Revised Vendor Form.

As in respect of Phase II, the Exchange reserves the right to limit the number of vendors that may provide wireless data communications systems on the floor during Phase IV, based on the ability of the Exchange to maintain its regulatory oversight responsibilities in a satisfactory manner. In addition, as the Exchange gains experience with the use of wireless data communications technology on its floor, it may determine that additional restrictions, such as in respect of permissible transmissions or hardware, are warranted.

The Exchange does not currently plan to charge vendors or Exchange members or member organizations for the privilege of providing wireless data communications services during Phase IV, although it reserves its right to do so. If the Exchange does determine to impose Phase IV charges or any other charges, it would first seek Commission approval of any such charge.

2. Statutory Basis

The Exchange believes that the bases under the Act for the proposed rule change are: (i) The requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, 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, and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers; and (ii) the requirement under Section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

³ The service description as so amended (the "Revised Vendor Service Description") is set forth in *Attachment A* to *Exhibit A*.

⁴ Responsibility for losses; training; system maintenance and support; technological limitations; the availability of equipment and spare parts; and service charges.

⁵ A copy of the Associated Member Form is attached to the filing as *Exhibit B*. Attached as *Attachment A* to that form is a service description (the "Associated Member Service Description"), modified from the Revised Vendor Service Description as necessary to reflect the associated member context.

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 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 self-regulatory organization consents, the Commission will:

(A) By order approve the 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. 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 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 No. SR-NYSE-97-17 and should be submitted by July 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-17661 Filed 7-7-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38785; File No. SR-Phlx-97-15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Minimum Size Guarantee

June 30, 1997.

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 March 28, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 self-regulatory organization. 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 pursuant to Rule 19b-4 of the Act, proposes to amend Phlx Rule 1015 (Quotation Guarantees); Phlx Rule 1033 (Bids and Offers—Premium); and Floor Procedure Advice ("Advice") A-11 (Responsibility to Make Ten-Ups Markets), to reflect that the minimum size guarantee applicable to Phlx equity and index options may be larger than ten contracts. References to ten-up markets in these provisions are proposed to be replaced with "minimum size guarantee." Advice A-11 will thus be retitled "Responsibility to Make Markets of the Minimum Size Guarantee."

The Exchange also proposed that broker-dealer ("BD") orders for less than the minimum size guarantee that are represented at the trading post by a Floor Broker be treated the same as orders of ROTs for that amount (*i.e.*, such bids/offers will not be disseminated and will have no standing in the crowd).

In addition, the Exchange proposes to reorganize Phlx Rule 1015 by adding sub-paragraphs (1) and (2) to paragraph (a) to differentiate the requirements

applicable to floor traders from the agency provisions. The Exchange is also proposing to require that broker-dealer electronic messages (sometimes used in lieu of floor tickets) be marked B/D. Lastly, the Exchange is clarifying that the best quoted bid or offer ("BBO") referred in this Rule is the Exchange's displayed BBO.

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 self-regulatory organization 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 self-regulatory organization 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

Pursuant to Phlx Rule 1033(a), the Exchange requires that public orders be filled to a minimum depth of at least ten contracts at the BBO. This is often referred to as the "ten-up" requirement. Phlx Rule 1015 and Advice A-11 delineate the obligations of floor traders respecting Exchange quotation guarantees. Since 1987, these provisions have been intended to benefit customers by establishing ten contracts as the minimum depth to which such orders are entitled an execution at the best bid or offer.³ The intent was also to encourage floor traders to be more competitive and make size markets. In order for these purposes to be achieved, the Commission recognized that the floor traders' markets cannot be exhausted by competitors to the detriment of customers.⁴

In recent years, higher minimum guarantees have been established in certain options—higher than the traditional minimum size guarantee of ten contracts. These higher guarantees correspond to the maximum size of orders eligible for the Phlx Automated Options Market ("AUTOM") system's automatic execution feature, AUTO-X.

³ See Securities Exchange Act Release Nos. 24580 (June 11, 1987) 52 FR 23120 (June 17, 1987) (File No. SR-Phlx-87-09), and 26669 (March 27, 1989), 54 FR 13282 (March 31, 1989) (File No. SR-Phlx-89-02).

⁴ See Securities Exchange Act Release No. 34400 (July 19, 1994), 59 FR 38011 (July 26, 1994) (File No. SR-Phlx-91-45).

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 17 CFR 240.19b-4.

⁶ 17 CFR 200.30-3(a)(12).