limitation of the Exchange's liability, in connection with its administration of Phlx proprietary indices, negligent acts or omission. Notice of the proposed rule change appeared in the **Federal Register** on September 22, 2000.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Phlx currently lists and trades options on several proprietary indices.[4] Phlx Rule 1102A limits the Exchange's liability in connection with the administration of its proprietary indices. The Exchange proposes to amend Phlx Rule 1102A to disclaim liability for negligent conduct. The Exchange represents that there is a great deal work involved in the daily calculation and dissemination of these indices. In addition, the Exchange represents that although much of such work is automated, manual input is still required and the potential for human error exists which exposes the Exchange to a risk of liability. Potential human errors include inputting a symbol or index value incorrectly or missing a corporate action that has an effect on the index.

Phlx Rule 1102A disclaims Exchange liability for damages caused by errors, omissions or delays in the calculation or dissemination of any index value resulting from any conduct beyond the reasonable control of the Exchange, including an act of God, a power failure, or any error, omission or delay in the reported price of the underlying security. The Exchange believes that these disclaimer provisions are arguably ambigous with respect to whether the Exchange remains potentially liable for damages caused by any human error or omission by an Exchange employee in connection with the performance of the Exchange's index responsibilities. The Exchange believes, however, that the proposed amendment to Phlox Rule 1102 would make clear that the Exchange disclaims liability for negligent conduct, in addition to conduct beyond the Exchange's reasonable control, currently covered by Phlx Rule 1102A. The Exchange represents that other exchanges, including the American Stock Exchange ''(Amex''),[5] disclaim liability for negligent conduct in connection with their index operations. Finally, the Exchange acknowledges that Phlx Rule 1102A cannot be relied upon by the Exchange to limit liability to non-members or for any intentional or negligent violation of federal securities laws.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act[6] that rules of an exchange be designed to facilitate transactions in securities.[7]

The Commission notes that the proposed rule change is to the Amex's rule.[8] Further, the Commission notes that the proposed change cannot be used to limit the Phlx's liability to non-members for any intentional or negligent violations of the federal securities laws. The Commission believes that the prosed change should serve to facilitate transactions in securities. In this regard, the Commission believes that the proposal will encourage the Exchange continue to make options in its proprietary indices available to investors.

IV. Conclusion

It is therefore ordered, pursuant to section 19(2) of the Act,[9] that the proposed rule change (SR–Phlx–00–74) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29182 Filed 11–14–00; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 43292 (September 14, 2000), 64 FR 54719.

[4] Examples of the Exchange's proprietary indices Computer Box Maker Index (BMX), Phlx Oil Service Index (OSX), Gold-Sliver Index (XAU), National Over-the-Counter Index (XOC), Phlx Forest and Paper Products Sector Index (FPP), Over-the-Counter Prime Index (OTX), Utility Index (UTY), Semiconductor Index (SOX), TheStreet.com Internet Sector Index (DOT) and Wireless Telecom Sector Index (YLS).

[5] *See* Amex Rule 902C.

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] *See supra* note 5.

[9] 15 U.S.C. 78s(b)2.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43515; File No. SR–Phlx–99–32]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Maximum Size of Option Orders That May Be Executed Automatically

November 3, 2000.

I. Introduction

On August 23, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with 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 amending its rules regarding the automatic execution of options orders to increase the maximum number of contracts eligible to be executed on the Exchange's automatic execution system (''AUTO–X'') from fifty contracts to seventy-five contracts. On September 27, 1999 and January 23, 2000, respectively, the Phlx submitted Amendments Nos. 1 and 2 to the proposed rule change.[3] Notice of the proposal was published in the **Federal Register** on June 21, 2000.[4] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The AUTO–X feature of the Exchange's Automated Options Market System (''AUTOM'') automatically executes public customer market and marketable limit orders in options at the Exchange's displayed bid or offer. Generally, public customer market and marketable limit orders of up to fifty contacts may be automatically executed through AUTO–X.[5] Orders are routed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange designated the proposal as filed pursuant to Section 19(b)(2) of the Act. The Exchange originally filed the proposal pursuant to Section 19(b)(3)(A). *See* Letter from Edith Hallahan, Deputy General Counsel, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission, dated September 23, 1999 (''Amendment No. 1''). In Amendment No. 2, the Exchange deleted a provision in the original proposal that restricted the increase in maximum order size eligibility to 100 options. *See* Letter from Nandita Yagnik, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission, dated January 20, 2000 (''Amendment No. 2'').

[4] *See* Securities Exchange Act Release No. 42932 (June 13, 2000), 65 FR 38621 (June 21, 2000).

[5] *See* Securities Exchange Act Release No. 36601 (December 18, 1995), 60 FR 66817 (December 26,

through AUTOM from member firms directly to the appropriate specialist on the trading floor. Orders routed through AUTOM that are eligible for AUTO–X are automatically executed at the disseminated quotation price on the Exchange and reported back to the originating firm.[6]

The Exchange proposes to amend Phlx Rule 1080(c) to increase the maximum order size eligibility for automatic execution through AUTO–X from fifty contracts to seventy-five contracts. The Exchange represents that AUTO–X affords prompt and efficient automatic executions at the displayed price and therefore believes that increasing automatic execution levels will provide the benefits of automatic execution to a larger number of customer orders. Further, the Exchange notes that this increase from fifty contracts to seventy-five contracts is in line with prior changes to AUTO–X levels.[7]

The Exchange represents that its rules contain several safeguards to ensure the proper handling of AUTO–X orders. First, Phlx Rule 1080(f)(iii) states that a specialist is responsible for the remainder of an AUTOM order where a partial execution has occurred. Phlx Rule 1015 governs quotation guarantees and requires the trading crowd to ensure that public customer orders are filled at the best market for a minimum of ten contracts (''ten-contract guarantee''). Further, Options Floor Procedure Advice F–7 provides that the volume guarantees (including AUTO–X levels) are deemed to be the stated size in any bid or offer voiced or displayed on the Options Floor. Therefore, quoted markets are guaranteed up to that size. The Exchange represents that violations of any of these provisions could be referred to the Business Conduct Committee for disciplinary action.

Second, the Exchange represents that Registered Options Traders (''ROTs'') have discretion to participate on the Wheel that allocates AUTO–X trades.[8] Consequently, an increase in the maximum AUTO–X order size does not prevent an ROT from declining to participate on the Wheel. The Exchange represents that the Wheel operates by rotating in two-lot to ten-lot increments depending upon the size of the order, and thus no single ROT will be allocated the entire seventy-five contracts.

Third, the Exchange represents that its procedures allow a specialist to disengage AUTO–X in extraordinary circumstances,[9] and that AUTOM users will be notified of such situations. For example, in extraordinary (fast market) conditions, quotations are disseminated with an ''F'' and the ten-contract guarantee on the screen markets is suspended pursuant to Options Floor Procedure Advice F–10.[10]

Finally, the Exchange notes that its rules provide a minimum net capital requirement for ROTs.[11] In addition, a ROTs 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. Further, the Exchange represents that it believes that clearing firm procedures address concerns regarding whether an ROT has the financial capability to support trading of options orders a large as seventy-five contracts.

The Exchange represents that it believes that automatic execution of orders for up to seventy-five contracts will provide customers with quicker, more efficient executions for a larger number of orders, by providing automatic rather than manual executions, thereby reducing the number of orders subject to manual processing. Further, the Exchange represents that increasing the AUTO–X maximum order size 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.

III. Discussion

After careful review, 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 Section 6 of the Act.[12] Among other provisions, section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national securities system; and protect investors and the public interest.[13]

While increasing the maximum order size limit from fifty contracts to seventy-five contracts for AUTO–X eligibility by itself does not raise concerns under the Act,[14] the Commission believes that this increase raises collateral issues that the Phlx will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for the Exchange's automatic execution system. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed onto the AUTO–X system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through AUTO–X, the greater the risk market makers must be willing to accept. The Commission does not believe that, because the Exchange's Options Committee determines to approve orders as large as seventy-five contracts as eligible for AUTO–X, the Options Committee or any other Phlx committee or officials should disengage AUTO–X more frequently by, for example, declaring a ''fast'' market. Disengaging AUTO–X can negatively affect investors by making it slower and less efficient to

1995) (approving proposal to increase order size eligibility limits for AUTO–X from twenty-five to fifty contracts).

[6] *See* Phlx Rule 1080(c).

[7] *See supra* note 5; Securities Exchange Act Release Nos. 32906 (September 15, 1993), 58 FR 49345 (September 22, 1999) (approving proposal to increase order size eligibility limits for AUTO–X from twenty to twenty-five contracts); and 29837 (October 18, 1991), 56 FR 55146 (October 24, 1991) (approving proposal to increase order size eligibility limits for AUTO–X from ten to twenty contracts).

[8] Unlike ROTs, specialists are required to participate on the Wheel. *See* Phlx Rule 1080(g).

[9] *See* Phlx Rule 1080(e) and Options Floor Procedure Advice A–13.

[10] Options Floor Procedure Advice F–10 states, in relevant part, that ''[d]uring the period for which a fast market is in effect, displayed quotes for the respective options are not firm and volume guarantees of Option Advice A–11 are not applicable. * * *'' Options Floor Procedure Advice A–11 provides that ''public customer market or marketable limit orders in any options series on the Exchange are to be filled at the best market to a minimum of ten contracts by floor traders in the crowd. * * *''

[11] *See* Phlx Rule 703.

[12] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] The Commission notes that it is concurrently approving similar proposals filed by the American Stock Exchange, LLP (''Amex''), Chicago Board Options Exchange, Inc. (''CBOE''), and the Pacific Stock Exchange, Inc. (''PCX''). *See* Securities Exchange Act Release No. 43516 (November 3, 2000) (SR–Amex–99–45); 43517 (November 3, 2000) (SR–CBOE–99–51); and Securities Exchange Act Release No. 43518 (November 3, 2000) (SR–PCX–00–32).

execute their option orders. It is the Commission's view that the Exchange, when increasing the maximum size of orders that can be sent through AUTO–X, should not disadvantage all customers—the vast majority of which enter orders for less than seventy-five contracts—by making the AUTO–X sytstem less reliable.

IV. Conclusion

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 a national securities exchange, and, in particular, with section 6(b)(5).[15]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Phlx–99–32) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29186 Filed 11–14–00; 8:45 am]

BILLING CODE 8010–01–M

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 00-5 (6)]

Salamalekis v. Apfel; Entitlement to Trial Work Period Before Approval of an Award of Benefits and Before 12 Months Have Elapsed Since the Alleged Onset of Disability—Titles II and XVI of the Social Security Act.

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 00-5(6).

EFFECTIVE DATE: November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Cassia W. Parson, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-0446.

SUPPLEMENTARY INFORMATION: We are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative review within the Sixth Circuit. This Social Security Acquiescence Ruling will apply to all determinations or decisions made on or after November 15, 2000. If we made a determination or decision on your application for benefits between July 20, 2000, the date of the Court of Appeals' decision, and November 15, 2000, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to the prior determination or decision. You must demonstrate, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that application of the Ruling could change our prior determination or decision in your case.

Additionally, when we received this precedential Court of Appeals' decision and determined that a Social Security Acquiescence Ruling might be required, we began to identify those claims that were pending before us within the circuit that might be subject to readjudication if an Acquiescence Ruling were subsequently issued. Because we determined that an Acquiescence Ruling is required and are publishing this Social Security Acquiescence Ruling, we will send a notice to those individuals whose claims we have identified which may be affected by this Social Security Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under the Ruling. It is not necessary for an individual to receive a notice in order to request application of this Social Security Acquiescence Ruling to the prior determination or decision on his or her claim as provided in 20 CFR 404.985(b)(2) or 416.1485(b)(2), discussed above.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: October 19, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 00–5 (6)

Salamalekis v. *Apfel*, 221 F.3d 828 (6th Cir. 2000)—Entitlement to Trial Work Period Before Approval of an Award of Benefits and Before 12 Months Have Elapsed Since the Alleged Onset of Disability—Titles II and XVI of the Social Security Act.

Issue: Whether a claimant's return to substantial gainful activity (SGA) within 12 months of the alleged onset date of his or her disability, and prior to an award of benefits, precludes an award of benefits and entitlement to a trial work period.

Statute/Regulation/Ruling Citation: Sections 222(c), 223, 1614(a)(3) and (4) and 1619 of the Social Security Act (42 U.S.C. 422(c), 423, 1382c(a)(3) and (4) and 1382h); 20 CFR 404.1505, 404.1520, 404.1592, 416.905, 416.906, 416.920; Social Security Ruling (SSR) 82-52.

Circuit: Sixth (Kentucky, Michigan, Ohio, Tennessee).

Salamalekis v. *Apfel*, 221 F.3d 828 (6th Cir. 2000).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing and Appeals Council).

Description of Case: Manuel G. Salamalekis applied for Social Security disability insurance benefits on October 1, 1991, alleging disability since April 24, 1991, due to a heart condition and Parkinson's Disease. On March 2, 1992, less than a year after the alleged onset of disability, Mr. Salamalekis returned to work and promptly notified the Agency of his return. On the same day that Mr. Salamalekis returned to work, we ''determined he was entitled to receive disability insurance benefits'' and an award notice was sent to Mr. Salamalekis on March 8, 1992. It was not disputed that we were unaware that Mr. Salamalekis had returned to work when we determined his eligibility for benefits. We subsequently learned of his return to work. In May of 1992, we notified Mr. Salamalekis that his claim would be reviewed when his ''9th month of trial work'' ended. He