

evaluation, allocation to, and appointment of LLMs in one committee. The Commission finds that by doing so, it is likely that more consistent decisions regarding LLMs, and their role on the Exchange will be made. The Commission believes that this consistency will benefit customers and broker-dealers conducting business on the Exchange.

The Commission recognizes that currently, Market Makers and LLMs are not permitted to serve on the PCX Options Appointment Committee; however, they are permitted to serve on the PCX Options Allocation Committee. The Commission further recognizes that Market Makers and LLMs will continue to be permitted to serve on the Options Allocation Committee after it assumes the responsibilities of the Options Appointment Committee, and that this represents a change in the composition of persons who will make decisions regarding the appointments of Market Makers and LLMs.

The Commission does not believe it is contrary to the public interest, or the interests of PCX members, to allow Market Makers and LLMs to participate on the committee that appoints Market Makers and LLMs, make decisions to relieve LMMS of their appointments, designate interim LMMS, and make determinations pertaining to LMM-related issues not within the jurisdiction of any other standing committee.<sup>10</sup> The Commission expects that members of the Options Allocation Committee, including Market Makers and LLMs, will act fairly and in a non-discriminatory manner, and will recuse themselves from particular decisions, as appropriate. The Commission also expects that the Options Allocation Committee will continue to appoint only those members qualified for market maker positions, and will relieve Market Makers and LLMs of their positions only for appropriate reasons.

<sup>10</sup> The Commission notes that four of the nine members of the Chicago Board Options Exchange's ("CBOE") Modified Trading System Appointments Committee, which is responsible for the selection and removal of CBOE Designated Primary Market Makers ("DPM"), are Exchange members whose primary business is as a Market Maker, and two of the nine members are Exchange members whose primary business is as a Market Maker or as a DPM Designee. See CBOE Rule 8.80. In addition, the Philadelphia Stock Exchange's ("Phlx") Allocation, Evaluation and Securities Committee, which is the committee that appoints and evaluates specialists on the Phlx, and makes allocations, allows specialists and floor brokers to serve on the committee. See Phlx By-law Article X, Section 10-7.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43683; File No. SR-PHLX-00-67]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Related to PHLX Rule 1009A

December 6, 2000.

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> notice is hereby given that on September 7, 2000, 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 PHLX.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1 and 2 from interested persons and is simultaneously approving the proposal, as amended, on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend PHLX Rule 1009A, "Designation of the Index,"

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> On September 18, 2000, the PHLX amended the proposal to reflect the PHLX Rule 1009A(b)(6)(i), which established a concentration requirement for the Gold/Silver Index. See letter from Nandita Yagnik, PHLX, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated September 15, 2000 ("Amendment No. 1"). The Commission approved the adoption of PHLX Rule 1009A(b)(6)(i) on July 25, 2000. See Securities Exchange Act Release No. 43070 (July 25, 2000), 65 FR 47551 (August 2, 2000) (order approving File No. SR-PHLX-00-69) ("July 25 Order"). On November 30, 2000, the PHLX amended the proposal to indicate that the PHLX will use Rule 19b-4(e) under the Act in accordance with the terms and conditions set forth in the order approving Rule 19b-4(e) under the Act. See letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, PHLX, to Nancy Sanow, Division, Commission, dated November 30, 2000 ("Amendment No. 2").

provide for the listing and trading of narrow-based stock index options pursuant to Rule 19b-4(e) under the Act.<sup>4</sup>

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

#### 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 III below. The PHLX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### (1) Purpose

The PHLX proposes to amend PHLX Rule 1009A(b) to provide for the listing and trading of narrow-based stock index options pursuant to Rule 19b-4(e) under the Act. The purpose of the proposal is to allow the PHLX to list and trade narrow-based index options immediately without filing a proposed rule change with the Commission under Section 19(b)(3)(A) of the Act prior to trading the product, as PHLX Rule 1009A(b) currently requires.

Currently, PHLX Rule 1009A(b) allows the PHLX to list and trade options on a narrow-based index 30 days after the Exchange files a proposal under Section 19(b)(3)(A) of the Act describing the index option, provided that the index meets the generic listing criteria set forth in PHLX Rule 1009A(b). The Commission release adopting Rule 19b-4(e) under the Act ("New Products Release"),<sup>5</sup> however, no longer requires a Section 19(b)(3)(A) filing and subsequent waiting period so long as the exchange relying on Rule 19b-4(e) under the Act has generic listing criteria approved by the Commission and meets certain other requirements.

The New Products Release indicated that products meeting the listing criteria

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

<sup>5</sup> See Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

approved by the Commission in its 1994 Generic Narrow-Based Index Options Approval Order (as set forth in PHLX Rule 1009A(b))<sup>6</sup> qualified for filing under Rule 19b-4(e) under the Act, so long as the exchange eliminated the Section 19(b)(3)(A) rule filing requirement from its existing rules.<sup>7</sup> Therefore, the PHLX proposes to eliminate the Section 19(b)(3)(A) rule filing requirement in PHLX Rule 1009A(b) the instead incorporate the provisions of new Rule 19b-4(e) under the Act. The PHLX represents that the Exchange will use Rule 19b-4(e) under the Act in accordance with the terms and conditions set forth in the order approving Rule 19b-4(e) under the Act.<sup>8</sup> The PHLX believes that the proposal should allow the Exchange to list and trade narrow-based index options that comply with the PHLX Rule 1009A(b) standards immediately, thereby providing a more expeditious method of offering these products in the marketplace.

#### (2) Basis

For these reasons, the PHLX believes that the proposed rule change 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, to prevent fraudulent and manipulative acts and practices and to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by providing a quicker method of putting important hedging tools in the marketplace.

#### (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 on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

<sup>6</sup> See Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) (order approving File Nos. SR-Amex-92-35; SR-CBOE-93-59; SR-NYSE-94-17; SR-PSE-94-07; and SR-PHLX-94-10) ("Generic Index Narrow-Based Index Options Approval Order"). The Generic Narrow-Based Index Options Approval Order established generic listing standards for options on narrow-based indexes and adopted streamlined procedures for introducing trading in options satisfying the generic listing standards.

<sup>7</sup> See New Products Release at note 89.

<sup>8</sup> See Amendment No. 2, *supra* note 3.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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-00-67 and should be submitted by January 4, 2000.

### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulation thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b)(5)<sup>9</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.<sup>10</sup> Specifically, the Commission finds that the proposal furthers the objectives of the New Products Release, which indicated, among other things, that a self-regulatory organization ("SRO") could submit a proposal to eliminate the 19(b)(3)(A) rule filing requirement from an existing SRO rule, such as PHLX Rule 1009A(b), that permits the listing and trading of narrow-based index options that satisfy the criteria approved in the Generic Index Narrow-Based

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Index Options Approval Order.<sup>11</sup> The Commission notes that the Chicago Board Options Exchange, Inc. ("CBOE") and the American Stock Exchange LLC ("Amex") have eliminated the 19(b)(3)(A) rule filing requirement from their rules permitting the listing and trading of options pursuant to the Generic Narrow-Based Index Options Approval Order,<sup>12</sup> and that the PHLX's proposal is substantially identical to the CBOE and Amex proposals. Accordingly, Commission finds that the PHLX's proposal does not raise new regulatory issues.

The Commission finds good cause for approving the proposal and Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act. As noted above, the PHLX's proposal is consistent with the New Products Release and is substantially identical to rule changes adopted previously by the CBOE and the Amex. In addition, the Commission believes that approving the proposal on an accelerated basis will help to ensure that PHLX is not disadvantaged in the listing of new index option products vis-a-vis the Amex and the CBOE. Because Amendment No. 1 reflects the adoption of PHLX Rule 1009A(b)(6)(i), which the Commission approved previously,<sup>13</sup> Amendment No. 1 does not raise new regulatory issues. Amendment No. 2 strengthens the PHLX's proposal by indicating that the PHLX will use rule 19b-4(e) under the Act in accordance with the terms and conditions set forth in the order approving Rule 19b-4(e) under the Act. Accordingly, the Commission finds that it is consistent with sections 6(b) and 19(b)(2) of the Act to approve the proposal and Amendment Nos. 1 and 2 on an accelerated basis.

### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-PHLX-00-67), as amended, is approved on an accelerated basis.

<sup>11</sup> See New Products Release at note 89.

<sup>12</sup> See Securities Exchange Act Release Nos. 41374 (May 5, 1999), 64 FR 25936 (May 13, 1999) (File No. SR-CBOE-99-16); and 41091 (February 23, 1999), 64 FR 10515 (March 4, 1999) (File No. SR-Amex-99-07).

<sup>13</sup> See July 25 Order, *supra* note 3.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43684; File No. SR-Phlx-00-93]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Providing Automatic Executions for Public Customer Orders at the NBBO

December 6, 2000.

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> notice is hereby given that on October 16, 2000, 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, II, and III below, which Items have been prepared by the Exchange. On November 22, 2000 and December 1, 2000, the Exchange submitted Amendments Nos. 1<sup>3</sup> and 2,<sup>4</sup> respectively, to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from

interested persons and to grant accelerated approval to the portion of the proposal allowing AUTO-X eligible orders to be automatically executed at the NBBO, provided that the NBBO is not better than the specialist's BBO by a predetermined step-up parameter.<sup>5</sup>

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

##### A. NBBO Feature

The Exchange proposes an enhancement to AUTO-X, the automatic execution feature of the Exchange's Automated Options Market ("AUTOM") System, that would allow AUTO-X eligible orders to be automatically executed at the NBBO, provided that the NBBO is not better than the specialist's BBO by a predetermined "step-up parameter." The enhancement is known as the "NBBO Feature."

Under proposed Rule 1080(c)(i), the NBBO Feature would execute AUTO-X eligible orders at the NBBO for certain options designated by the Options Committee as eligible for the NBBO Feature ("automatic step-up options"), provided that the NBBO does not differ from the specialist's BBO by more than the step-up parameter. The step-up parameter for automatic step-up options would be the minimum trading increment (one "tick") for options in that series established pursuant to Exchange Rule 1034, or any greater amount established by the Options Committee in respect of specified automatic step-up options or series of options.

The proposal provides that orders that would otherwise qualify as automatic step-up options would be executed manually in accordance with Exchange rules in three circumstances: (1) Where the specialist's best bid or offer<sup>6</sup> is inferior to the current best bid or offer in another market by more than the step-up parameter; (2) where the NBBO is crossed (*i.e.*, 2 bid, 2 asked); or locked (*i.e.*, 2 bid, 2 asked); or (3) in respect of equity options other than automatic step-up options where the specialist's BBO is inferior to the current best bid or offer in another market by any

amount. The proposed rule would also include a provision that an order may also be executed partially by AUTO-X and partially manually.

In addition, under the proposal, the Chairman of the Options Committee or his designee<sup>7</sup> (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) may determine to disengage the NBBO Feature for orders in certain automatic step-up options after notice to AUTOM users. In circumstances where the NBBO Feature is disengaged, such orders will continue to be executed manually, in accordance with Exchange rules. Finally, an additional proposed amendment to Exchange Rule 1080(e) would provide that the NBBO Feature is always disengaged when AUTO-X is disengaged.

##### B. Exclusion of Unreliable Quotes from NBBO

Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in certain automatic step-up options on the Exchange or other markets are deemed not to be reliable, such unreliable quotes would be excluded from the calculation of NBBO, and customers would receive an automatic execution at NBBO based on the remaining markets whose quotes are not deemed to be unreliable.

A quote could be deemed not to be reliable because of Exchange communications or systems problems; fast markets; delays in the dissemination of quotes because of queues on the Options Price Reporting Authority ("OPRA") (in which case the Exchange would know that there is a delay in the dissemination of quotes from the other exchanges, which would likely render such quotes stale); or if the Exchange is advised by another exchange that it is experiencing communication or system problems that would cause its disseminated quotes to be unreliable.

The text of the proposed rule change is as follows. New text is italicized.

Rule 1080. (a)-(b) No change.

(c) AUTO-X—AUTO-X is a feature of AUTOM that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee

<sup>7</sup> The designee would be a member of the Options Committee. Telephone conversation between Richard Rudolph, Counsel, Phlx, and Terri Evans, Special Counsel, Division, Commission, on November 24, 2000.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> In Amendment No. 1, the Phlx restated its filing in its entirety to clarify, in part, (1) the factors used in determining which options would qualify as step-up options; (2) when quotes would be deemed unreliable in the rule text; and (3) the factors to be considered in determining whether quotes previously deemed unreliable would be included in the national best bid or offer ("NBBO"). Amendment No. 1 also provides for a memoranda listing all automatic step-up options to be circulated to Exchange members and member organizations. See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 20, 2000 (with attached restated 19b-4 filing) ("Amendment No. 1").

<sup>4</sup> In Amendment No. 2, the Phlx restated its filing in its entirety to (1) clarify that there may be some circumstances where the specialist's best bid or offer ("BBO") is inconsistent with the Exchange's BBO; (2) make conforming changes to its rule language to reflect that the specialist's quote may not be the Exchange's BBO; and (3) make technical corrections to its rule text. See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated November 30, 2000 (with attached restated 19b-4 filing) ("Amendment No. 2").

<sup>5</sup> The Commission is not approving the portion of the proposed rule change that would allow the Exchange to determine when unreliable quotes would be excluded from the calculation of the NBBO. Further, approval of the automatic step-up feature should not be interpreted as suggesting that the Commission is predisposed to approving the remainder of the proposal.

<sup>6</sup> The proposed rule states that there may be some circumstances in which the specialist's BBO is inferior to the Exchange's BBO. See Amendment No. 2, *supra* note 4.