

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43719; File No. SR-PHLX-00-97]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Establishment of a Systems Change and a Fee to Members and Member Organizations for Receiving On-line Options Information

December 13, 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 November 14, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Phlx proposes to effect a systems change and adopt a real-time, trade information fee of \$.0025 per contract for members or member organizations receiving option trade information on-line (*i.e.*, electronically) from the Exchange.

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

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The purpose of this proposed rule change is to effect an information-

related enhancement to the AUTOM System<sup>3</sup> and to amend the Phlx's fee schedule to impose a \$.0025 per contract fee to members and member organizations who choose to use this enhancement.

Recently, the Exchange made available a back-office enhancement to the AUTOM System on the options floor that provides option trade information on-line (meaning electronically) on a real-time basis. Members and member organizations can now choose to connect and log on to an interface with the AUTOM System to receive options (equity and index options) transaction information real-time. Specifically, once transaction information is in the AUTOM System, it becomes available to member organizations, who may connect to the feature; member organizations may determine to offer such information to their floor traders electronically.<sup>4</sup> The transaction information covered by this feature includes the type of information generally captured in Exchange systems as a trade.<sup>5</sup>

Currently, such information is available in hard copy (paper ticket) form, which can be confirmed against floor trader positions. The Exchange has created this electronic link in order to facilitate electronic position monitoring for options. The feature is voluntary and does not replace the current hard-copy printing of transaction information. Member organizations choosing to log on to the feature will be charged \$.0025 per contract. The Exchange chooses to charge a per contract fee rather than a flat fee for the service to encourage more firms, including small firms, to use this important risk management tool.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) and (b)(5) of the Act<sup>6</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and promotes just and equitable principles of trade.

<sup>3</sup> AUTOM is the Phlx's Automated Options Market System. See Phlx Rule 1080.

<sup>4</sup> According to the Exchange, members and member organizations that are logged on to the AUTOM System and choose to receive the options transaction information real-time may determine how to distribute the information to their floor traders, including using hand-held devices. As per telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Heather Traeger, Attorney, SEC, Division of Market Regulation, on December 13, 2000.

<sup>5</sup> This information includes the symbol, volume, price, time and clearing information of the traded security.

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (b)(5).

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

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

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change, which (1) establishes or changes a due, fee, or other charge imposed by the Exchange and (2) effects a change in an existing order-entry or trading system of the Exchange that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(2) and (f)(5) of Rule 19b-4 thereunder.<sup>8</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interest persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 Room. Copies of such filing also will be available for inspection and copying at

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2) and (f)(5).

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

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

the principal office of the Phlx. All submissions should refer to File No. SR-PHLX-00-97 and should be submitted by January 12, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Margaret H. McFarland, Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43717; File No. SR-Phlx-00-54]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Listing and Trading of Trust Shares

December 13, 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 June 19, 2000, 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 Phlx. On August 30, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On December 12, 2000, the Exchange submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing

this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change, as amended.

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

The Phlx proposes to amend its rules to permit the listing and trading, or the trading pursuant to unlisted trading privileges ("UTP"), of Trust Shares. New Section (i) of Phlx Rule 803 provides listing standards for Trust Shares, which represent interests in a unit investment trust operating on an open-end basis and holding a portfolio of securities. In conjunction with Rule 803(i), the Exchange is also: amending its "Hours of Business" Rule (Rule 101) to address Trust Shares; making conforming changes to its PACE Rule (Rule 229) regarding automatic price improvement; and adopting new Rule 136 regarding trading halts in Trust Shares. The Exchange is also proposing to trade shares of the Nasdaq-100 Trust ("Nasdaq-100 Index Tracking Stock") on a UTP basis. The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

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Rule 101 Dealings Upon the Exchange Hours of Business

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Supplementary Material

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.02 [Post-Primary Session] Equity Trading Hours. Trading in any equity security on the Exchange's equity trading floor shall commence at 9:30 a.m. and end at 4 p.m. each business day, unless otherwise announced by the Exchange, except that:

(i) the Post-Primary Session ("PPS") will operate from 4 to 4:15 p.m. for PPS-designated orders pursuant to Rule 232(b), and]

(ii) the after hours trading facility for GTX orders will operate pursuant to Rule 232(c), and

(iii) Transactions in Nasdaq-100 Index Tracking Stock may be effected on the Exchange until 4:15 p.m. each business day as well as pursuant to Rule 232(c).

Rule 229. Philadelphia Stock exchange Automated Communication and Execution System (PACE)

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Supplementary Material

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.07

(c) Price Improvement for PACE Orders

(i) Automatic Price Improvement—Where the specialist voluntarily agrees to provide

automatic price improvement to all customers and all eligible market orders in a security, automatically executable market and marketable limit orders in New York Stock Exchange and American Stock Exchange listed securities received through PACE for 599 shares or less shall be provided with automatic price improvement of 1/6 (or 1/64 in the case of Nasdaq-100 Index Tracking Stock) for equities trading in fractions, or .01 for equities trading in decimals from the PACE Quote where received beginning at 9:30 a.m., except where:

(A) a buy order would be improved to a price less than the last sale or a sell order would be improved to a price higher than the last sale (except as provided in (E) below); or

(B) a buy order would be improved to the last sale which is a downtick or a sell order would be improved to the last sale price which is an uptick (except as provided in (E) below). The PACE System will determine whether the last sale price is a downtick or an uptick. The PACE System does not recognize changes from the previous day's close.

In these situations, the order is not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote. A specialist may voluntarily agree to provide automatic price improvement to larger orders in a particular security to all customers under this provision. A specialist may choose to provide automatic price improvement for equities trading in fractions where the PACE Quote is (I) 3/16 or greater, [or] (II) 1/6 or greater, or (III) solely with respect to Nasdaq-100 Index Tracking Stock, 1/16 or greater. [for equities trading in fractions, or] A specialist may choose to provide automatic price improvement where the PACE Quote is .03 or greater or .05 or greater for equities trading in decimals.

\* \* \* \* \*

.17 Except for transactions in Nasdaq-100 Index Tracking Stock: (a) Orders received by 4:00 p.m. Eastern Time as determined electronically by the PACE system are eligible for execution[.] (b) Orders received after such time will be rejected and returned to order entry firm[.], and (c) From 4 to 4:15 p.m., Eastern Standard Time, PACE may be used as a routing system for PPS eligible orders. Orders in Nasdaq-100 Index Tracking Stock received by 4:15 p.m. Eastern Time as determined electronically by the PACE system are eligible for execution.

Rule 136. Trading Halts in Certain Exchange Traded Funds

Rule 1047A(c) shall apply to the trading of Trust shares listed pursuant to the terms of Rule 803(i). The term "option" as used therein shall be deemed for the purposes of this rule only to include a Trust Share.

Rule 803. Criteria for Listing—Tier I

\* \* \* \* \*

(i) Trust Shares

(1) Definitions.

(i) Trust Shares. The term "Trust Share" means a security (a) that is based on a unit investment trust ("Trust") which holds the securities which comprise an index or portfolio underlying a series of Trust Shares;

<sup>9</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 clarified references to Trust Shares series in the text of the Exchange's proposed rule. See Letter to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, from Nandita Yagnik, Attorney, Phlx (August 29, 2000).

<sup>4</sup> In Amendment No. 2, the Phlx proposed: trading Nasdaq-100 Index Tracking Stock until 4:15 p.m., establishing conditions for a specialist to provide automatic price improvement in Nasdaq-100 Index Tracking Stock on the Philadelphia Stock Exchange Automated Communication and Execution ("PACE") System; renumbering and retitling a new rule governing trading halts; and clarifying that transactions in Nasdaq-100 Index Tracking Stock would be reported to the Exchange's consolidated tape. Amendment No. 2 also indicated that securities now known as "Nasdaq-100 Index Tracking Stock" were formerly called "Nasdaq-100 Shares;" substituted "Nasdaq Investment Product Services, Inc." for "Nasdaq-Amex Investment Product Services, Inc." as sponsor; and made a technical change to the text of the proposed rule change. See Letter to Nancy Sanow, Assistant Director, Division of Market Regulation,

Commission, from Carla Behnfeldt, Counsel, Phlx (December 12, 2000).