

a third qualified member in place within twelve months of listing.

Finally, PCXE proposes to implement a transition period in order to provide its issuers with sufficient time to come into compliance with the proposed rule change.<sup>7</sup> Specifically, PCXE proposes: (i) to “grandfather” all public company audit committee members qualified under current PCX rules until they are re-elected or replaced; and (ii) give companies eighteen months from the date of Commission approval of this rule filing to recruit the requisite members for their audit committees. Issuers listed on PCXE as of the effective date of the proposed rule change will have six months to adopt a formal written audit committee charter.

### III. Discussion

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.<sup>8</sup> In particular, the Commission finds that the proposed rule change furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in that it is designed 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.

The Commission believes that the proposed rule change will protect investors by improving the effectiveness of audit committee of companies listed on PCXE. The Commission also believes that the new requirements will enhance the quality and reliability of financial statements of companies listed on PCXE by making it more difficult for companies to inappropriately distort their true financial performance. These new provisions should help to assure that investors have quality and reliable financial information regarding PCXE listed issuers, including for investors who decide to buy or sell the securities of these issuers in secondary market transactions.

Specifically, the Commission believes that the proposed definition of independence will promote the objectivity and reliability of a company’s financial statements. The Commission believes that directors without financial, familial, or other material personal ties to management will be more likely to objectively evaluate the propriety of management’s accounting, internal control, and financial reporting practices. In addition, the Commission considers that the proposed provision permitting a company to appoint one non-independent director to its audit committee, if the board determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, adequately balances the need for objective, independent directors with the company’s need for flexibility in exceptional and unusual circumstances. The Commission believes that the proposal’s requirement that the company disclose in its next annual proxy statement the nature of the relationship and the board’s reasons for determining that the appointment was in the best interests of the corporation will adequately guard against abuse of the proposed exception to the independence requirement.

In addition, the Commission believes that requiring boards of directors of listed companies to adopt formal written charters specifying the audit committee’s responsibilities, and how it carries out those responsibilities, will help the audit committee, management, investors, and the company’s auditors recognize, and understand the function of the audit committee and the relationship among the parties. Moreover, the Commission believes that the proposal’s requirement that companies provide yearly written confirmation regarding the independence, financial literacy, and financial expertise of directors, as well as the adequacy of the audit committee charter, will help the Exchange to ensure that listed companies are complying with the proposed rule change.

The Commission believes that the proposed rule change’s requirement that each issuer have an audit committee composed on three independent directors who are able to read and understand fundamental financial statements, will enhance the effectiveness of the audit committee and help to ensure that audit committee members are able to adequately fulfill their responsibilities. The Commission believes that requiring each audit committee member to satisfy this

standard will help to ensure that the committee as a whole is financially literate. Moreover, the Commission believes that requiring one member of the audit committee to have accounting or related financial management expertise will further enhance the effectiveness of the audit committee in carrying out its financial oversight responsibilities.

Finally, the Commission believes that the proposed transition period will enable issuers to determine when they must comply with the new requirements and will enable investors to determine when the protections afforded by the proposed rule change will be operational.

### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal to amend PCXE’s audit committee requirements is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-PC-00-40) is approved.

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. 34-43939; File No. SR-Phlx-01-05]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Prohibition Against Off-Floor Members Functioning as Market Makers.

February 7, 2001.

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 January 17, 2001, 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.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<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>7</sup> See Amendment No. 1 *supra* note 3.

<sup>8</sup> In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation, 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires the rules of an exchange to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 proposes to amend Phlx Rule 1080 relating to the Exchange’s Automated Options Market (AUTOM) and Automatic Execution system (AUTO-X),<sup>4</sup> by adopting Rule 1080(j). This proposed rule would prohibit members from entering, or facilitating the entry of, limit orders in the same options series, for the account or accounts of the same or related beneficial owners, in such a manner that the member or the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such options contract on a regular or continuous basis.

### **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 Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 the proposed rule change is to prevent persons from functioning as market makers through Phlx member firms without those persons being held to the affirmative

obligations and restrictions imposed on on-floor market makers (Registered Options Traders, or “ROT’s”).<sup>5</sup> Phlx Rule 1014(b) defines a ROT as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. ROTs are subject to numerous affirmative trading, margin and capitalization requirements and prohibitions pursuant to the Act and the regulations thereunder, and to Exchange rules.<sup>6</sup>

Phlx states that recently certain off-floor traders have demonstrated their ability to engage in simultaneous or near-simultaneous entry of limit orders, to buy and sell the same options contract. In Phlx’s view, persons engaged in such practices are effectively functioning as market makers from off the floor of the Exchange.

The proposed rule would prohibit members from entering, or facilitating the entry of, limit orders in the same options series from off the floor of the Exchange, for the account or accounts of the same or related beneficial owners, in such a manner that the off floor member or the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such options contract on a regular or continuous basis. The Exchange proposes this change to prohibit users from acting as market makers through AUTOM and AUTO-X.

In determining whether an off-floor member or beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things: the simultaneous or near-simultaneous entry of limit orders to buy and sell the same options contract; the multiple acquisition and liquidation of positions in the same options series during the same day; and the entry of multiple limit orders at different prices in the same options series.

<sup>5</sup> Telephone call between Rick Rudolph, Counsel, Phlx, and Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, on January 24, 2001.

<sup>6</sup> For example, Exchange Rule 1014, Obligations And Restrictions Applicable To Specialists and Registered Options Traders, sets forth numerous obligations and restrictions applicable to ROTs on the floor on the Exchange, including the obligation of a ROT to engage in dealings reasonably calculated to contribute to the maintenance of a fair and orderly market; limitations on quote spread parameters; limitations on price change parameters; the requirement to yield priority to customer orders; and in-person, on-floor quarterly trading requirements. Off-floor traders that enter orders through AUTOM and effectively function as market makers are not currently subject to such affirmative requirements and limitations.

##### **2. Statutory Basis**

The Exchange represents that the proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Act in general, and with Section 6(b)(5)<sup>8</sup> of the Act in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by prohibiting AUTOM users from functioning as market makers from off the floor of the Exchange.

#### *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 that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *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 proposed rule change has been filed by the Exchange as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup> Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

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.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>3</sup> 17 CFR 240.19b(f)(6).

<sup>4</sup> AUTOM is the Exchange’s electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or automatically if they are eligible for AUTOM’s automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule 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 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 in the Commission's Public Reference Section. 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-01-05 and should be submitted by March 8, 2001.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 01-3801 Filed 2-14-01; 8:45 am]

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#### DEPARTMENT OF STATE

[Public Notice 3576]

#### Bureau of Educational and Cultural Affairs Project To Develop a Master's Degree Program in Business Administration for Croatia; Request for Grant Proposals

**SUMMARY:** The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs in the Department of State announces an open competition for an assistance award to support the Consortium of Faculties of Economics in Croatia as the Consortium develops a full-time Master's Degree program in Business Administration to be based in the city of Zadar. Core program instruction for the MBA program will take place in Zadar during the second year of the program, once a curriculum is developed in collaboration with the Consortium of Faculties of Economics. Accredited

post-secondary educational institutions and other organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals that address these objectives. The means for achieving these objectives may include curriculum development, faculty training, case study development, consultation, research, distance education, internship training and professional outreach to public and private sector managers and entrepreneurs.

#### Overview and Project Objectives

The project is designed to support the development of a Master's Degree program in Business Administration (MBA) in English to be based in Zadar, while also strengthening business education throughout Croatia. The Consortium of Faculties of Economics in Croatia (which includes the Universities of Zagreb, Split, Rijeka and Osijek) intends to develop core subjects and specializations. The project will focus on faculty and curriculum development for faculty at institutions belonging to the consortium.

Applicants are encouraged to develop creative strategies to pursue these objectives and that reflect an understanding of the status, achievements, and current needs of business education in Croatia.

The project should pursue these objectives through a strategy that coordinates the participation of junior and senior level faculty, administrators, or graduate students for any appropriate combination of teaching, research, mentoring, internships, and outreach, for exchange visits ranging from one week to an academic year. Visits of one semester or longer for participants from Croatia are strongly encouraged and program activities must be tied to the goals and objectives of the project.

If the proposed project would occur within the context of a previous or ongoing project, the proposal should explain how the request for Bureau funding would build upon the pre-existing relationship or complement previous and concurrent projects, which must be listed and described with details about the amounts and sources of external support. Previous projects should be described in the proposal, and the results of the evaluation of previous cooperative efforts should be summarized.

The project should pursue these objectives through a strategy that coordinates the participation of junior and senior level faculty, administrators, or graduate students for any appropriate combination of teaching, research, mentoring, internships, and outreach,

for exchange visits ranging from one week to an academic year. Visits of one semester or longer for participants from Croatia are strongly encouraged and program activities must be tied to the goals and objectives of the project.

If the proposed project would occur within the context of a previous or ongoing project, the proposal should explain how the request for Bureau funding would build upon the pre-existing relationship or complement previous and concurrent projects, which must be listed and described with details about the amounts and sources of external support. Previous projects should be described in the proposal, and the results of the evaluation of previous cooperative efforts should be summarized.

#### U.S. Institution and Participant Eligibility

In the United States, participation in the program is open to accredited two and four-year colleges and universities, including graduate schools as well as other organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c). Applications from consortia or other combinations of U.S. colleges and universities are eligible. The lead U.S. organization in the consortium or other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners.

With the exception of outside consultants reporting on the degree to which project objectives have been achieved, participants who are traveling under the Bureau's grant funds must be teachers, advanced graduate students who are teaching or research assistants, or administrators from the participating institution(s). Participants representing the U.S. institution(s) must be U.S. citizens. Advanced graduate students are eligible for Bureau-funded participation in this program only if they are working under the direction of an accompanying faculty participant or project director on the achievement of project objectives.

#### Croatian Institutional and Participant Eligibility

The Croatian partner is the Consortium of Faculties of Economics in Croatia. Secondary foreign partners may include relevant governmental and non-governmental organizations, as well as non-profit service and professional organizations concerned with the development of the MBA Program in Croatia. Foreign participants must be instructors at a university belonging to

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