

designated by the Commission, the proposed rule change has become effective pursuant to section 19(b)(3)(A)¹⁰ of the Act and Rule 19b-4(f)(6)¹¹ thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx has requested that the Commission accelerate the operative date to March 8, 2001. The Commission finds that accelerating the operative date of the proposed rule change to enable the Phlx to compete with other exchanges in these products and provide investors with an additional venue to trade these products is consistent with the protection of investors and the public interest, and thus designates March 8, 2001 as the operative date of this filing.¹³

IV. Solicitation of Comments

Interested 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 in the Commission's Public Reference Room. 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-01-32 and should be submitted by April 6, 2001.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² The Phlx has requested and the Commission has agreed to waive the five day pre-filing notice equipment.

¹³ For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44057;
File No. SR-Phlx-01-03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of That Portion of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the prohibition Against Harassment and Certain Similar Improper Trading Practices in the Exchange Codes of Conduct

March 9, 2001.

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 January 11, 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 and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons and to approve on an accelerated basis the portion of the proposal prohibiting harassment and certain other improper conduct.

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

The Phlx proposes to file its Employee Code of Conduct and its Code of Conduct for Board Members and Committee Members (collectively "Codes of Conduct"). The Phlx proposes to incorporate in its Codes of Conduct language similar in import to that of proposed new Commentary .01 ("Prohibition Against Harassment") to Exchange Rule 707 ("Just and Equitable Principles of Trade").³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On November 13, 2000, the Exchange filed SR-Phlx-00-94, which added proposed new Commentary .01 to Exchange Rule 707 regarding prohibition against harassment and other improper behavior because of listing or competitive practices. Simultaneously with this filing, the Exchange filed SR-Phlx-01-02, which adds proposed Commentary .02 to Exchange Rule 1009 regarding listing procedures and is currently pending with the Commission. These three filings are being done in

The text of the proposed rule change is available at the Phlx or 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. 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 Exchange has long insisted that members of the Boards of Governors of the Exchange and its subsidiaries, committee members of the Exchange and its subsidiaries, and employees, officers, and agents of the Exchange and its subsidiaries ("Covered Persons") observe the highest standards of business ethics and fair dealing. The Exchange has therefore had an Employee Code of Conduct and a Code of Conduct of Board Members and Committee Members. The Exchange is now proposing to file these Codes of Conduct, which contain new proposed anti-harassment language similar to Commentary .01 of Rule 707, with the Commission.⁴

The Phlx proposes to amend the Codes of Conduct to state that Covered Persons may not directly or indirectly threaten, harass, intimidate, refuse to deal with, or retaliate against any member, member organization, person associated with or employed by a member or member organization, or other market participant because such person or entity has: (a) Made a proposal to any exchange or other market to list or trade any option class; (b) advocated or proposed to list or trade

order to, among other things, fulfill Securities and Exchange Commission requirements pursuant to In the Matter of Certain Activities of Options Exchanges, Securities Exchange Act Release No. 43268 (September 11, 2000). Although proposed by the Phlx as part of this filing, the Commission is not considering at this time proposed procedures for the listing of new options classes. Instead, the Phlx's proposed listing procedures will be considered pursuant to File No. SR-Phlx-01-02.

⁴ The Commission has directed the options markets to implement rules and codes of conduct regarding the type of behavior described herein. See Securities Exchange Act Release No. 43268, *supra* note 3.

an option class on any exchange or other market; (c) commenced making a market in or trading any option class on any exchange or other market; (d) sought to increase the capacity of any options exchange or the options industry to disseminate quote or trade data; (e) sought to introduce new option products; or (f) acted, or sought to act, competitively.

The Codes of Conduct also would generally discuss certain practices that may improperly affect competition and the need to discuss certain issues with the Exchange's Antitrust Compliance Officer. The proposed language would specifically prohibit agreements with employees or members of any other exchange: that any option class shall be traded exclusively on any one exchange; to allocate trading of any option class or classes between or among exchanges; or to require, prevent or limit the listing, delisting, or trading of any option class.⁵

The purpose of adding the new proposed language prohibiting harassment for listing and competitive conduct in the Codes of Conduct is to extend to Covered Persons the Exchange's codification, in File No. SR-Phlx-00-94, of existing Exchange policy prohibiting harassment and intimidation on its trading floors and certain other similar improper trading practices.

While the Exchange has no rule that specifically prohibits conduct such as harassment or intimidation because of listing or competitive practices, the Phlx has long taken the position that harassing or intimidating behavior on its trading floors is inconsistent with just and equitable principles of trade in violation of Exchange Rule 707 and is detrimental to the interest and welfare of the Exchange in violation of Exchange Rule 708. The Exchange has therefore brought disciplinary actions, in furtherance of its obligations as a self-regulatory organization, involving violations of Exchange Rules 707 and 708. In order to emphasize the importance to Phlx members and reinforce the Exchange's prohibition of any such conduct, the Exchange has codified, in Commentary .01 to Rule 707, in File No. SR-Phlx-00-94, the prohibition against harassment, intimidation, or retaliation because of listing or competitive practices. The Exchange wants to similarly emphasize to Covered Persons the import of this

prohibition by including it in the Codes of Conduct applicable to such persons.

In addition, the Phlx believes that the conduct prohibited in the Codes of Conduct may be fundamentally inconsistent with the obligations of Covered Persons, and contrary to the best interests of the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5)⁷ in particular, in that it is designed to prevent improper actions by members of the Boards of Governors of the Exchange and its subsidiaries, committee members of the Exchange and its subsidiaries, and employees, officers, and agents of the Exchange and its subsidiaries by prohibiting them from engaging in harassment and other improper behavior because of listing or competitive practices.

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

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

III. Solicitation of Comments

Interested 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 in the Commission's Public Reference Room. 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-01-03 and should be submitted by April 16, 2001.

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

The Commission finds that the portion of the proposed rule change prohibiting harassment and other improper conduct is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,⁸ and in particular, with the requirements of Section 6 of the Act.⁹ Specifically, the Commission finds that the portion of the proposal prohibiting harassment and other improper conduct is consistent with Sections 6(b)(5) of the Act¹⁰ in that it is designed to codify the Exchange's prohibition against harassment and improper practices in a manner that promotes just and equitable principles of trade, prevents fraudulent and manipulative acts and practices, maintains fair and orderly markets, and protects investors and the public interest.

The Phlx's new proposed language prohibiting harassment and other similar improper conduct for listing and competitive actions in the Codes of Conduct is intended to extend to Covered Persons the Exchange's codification of existing Exchange policy prohibiting harassment and intimidation on its trading floors and certain other similar improper trading practices contained in Commentary .01 to Phlx Rule 707. These sections provide generally that it is conduct inconsistent with just and equitable principles of trade for Covered Persons to engage in harassing and certain improper retaliatory actions as a result of another market participant's listing or competitive behavior. The Commission believes that this codification of existing policy in Phlx's Codes of Conduct is a reasonable means to ensure that the existing prohibitions against harassment and other similar improper conduct are extended to members of the Boards of Governors of the Exchange and its subsidiaries, committee members of the Exchange and its subsidiaries, and employees, officers, and agents of the Exchange and its subsidiaries.

The Commission finds good cause for approving the portion of the proposed rule change prohibiting harassment and

⁵ The Exchange recognizes that Covered Persons may engage in inter-exchange discussions properly authorized by the Commission (e.g., commission-authorized capacity mitigation discussions, which may include discussions about mitigation strategies such as delisting options).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

other similar improper conduct prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the portion of the proposed rule change prohibiting harassment and other similar improper conduct is based on Commentary .01 to Phlx Rule 707, which the Commission approved previously.¹¹ The Commission also observes that that portion of the proposed rule change concerns issues that previously have been the subject of a full comment period pursuant to Section 19(b) of the Act.¹² The Commission does not believe that the portion of the proposed rule change prohibiting harassment and other similar improper conduct raises novel regulatory issues that were not addressed in the previous filing. Accordingly, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,¹³ to approve the portion of the proposal prohibiting harassment and other similar improper conduct on an accelerated basis.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the portion of the proposed rule change prohibiting harassment and other similar improper conduct (SR-Phlx-01-03), is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44054;
File No. SR-Phlx-01-31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Increasing the AUTO-X Guarantee for Orders in Options Overlying the NASDAQ 100 Index Tracking Stock ("QQQ") to 100 Contracts

March 8, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,²

¹ See Securities Exchange Act Release No. 43989 (February 20, 2001), 66 FR 12581 (February 27, 2001) (File No. SR-Phlx-00-94)

² 15 U.S.C. 78s(b).

³ 15 U.S.C. 78s(b)(2).

⁴ 17 CFR 200.30-3(a)(12).

⁵ 15 U.S.C. 78s(b)(1).

⁶ 17 CFR 240.19b-4.

notice is hereby given that on March 5, 2001, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") 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 Phlx. The proposed rule change has been filed by the Phlx as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.³ 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 increase its automatic execution guarantee for options overlying the NASDAQ 100 Index Tracking Stock ("QQQ") to 100 contracts.

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

AUTOM is the Exchange's electronic order routing, delivery, execution, and reporting system for options.⁴ Orders are routed from member firms directly to the appropriate specialist on the trading floor. Certain orders are eligible for AUTOM's automatic executive feature, AUTO-X. These orders, generally for up to a maximum of seventy-five contracts,⁵ are automatically executed at the disseminated quotation price on the Exchange and reported back to the originating firm.⁶ The Exchange proposes to establish a 100 contract AUTO-X guarantee for eligible orders in

³ 17 CFR 240.19b-4(f)(6).

⁴ See Exchange Rule 1080(a).

⁵ See Exchange Rule 1080(b)(i).

⁶ See Exchange Rule 1080(c).

options delivered via AUTOM overlying the QQQ.

Exchange Rule 1080(c) provides that the Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO-X execution to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Commission pursuant to section 19(b)(3)(A) of the Act.⁷

The Exchange notes that the American Stock Exchange LLC ("Amex") recently increased its AUTO-X guarantee for options overlying the QQQ to 100 contracts.⁸ The Phlx certified the same options on February 26, 2001 and is filing this proposed rule change to match the size of orders in options overlying QQQ on the Amex.

The Exchange believes that the increase should provide customers with quicker executions for a larger number of orders in QQQ options by providing automatic rather than manual executions, thereby reducing the number of orders subject to manual processing. The Exchange also believes that increasing the AUTO-X maximum order size in QQQ options should not impose a significant burden on operation or capacity of the AUTOM System.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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 by providing automatic

⁷ *Id.*

⁸ See Securities Exchange Act Release No. 43887 (January 25, 2001), 66 FR 8831 (February 2, 2001) (File Nos. SR-PCX-00-18 and SR-Amex-00-57) (joint approval order increasing to 100 contracts the maximum size for options orders that may be automatically executed); and see Amex Information Circular #01-0183 (February 27, 2001) (indicating that, as of February 28, 2001, the maximum order size eligible for automatic execution for QQQ options in Auto-Ex was being increased from 75 to 100 contracts).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).