

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.<sup>11</sup> 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.<sup>12</sup> 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,<sup>13</sup> 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.<sup>14</sup>

**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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(2).

<sup>4</sup> 17 CFR 200.30-3(a)(12).

<sup>5</sup> 15 U.S.C. 78s(b)(1).

<sup>6</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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,<sup>5</sup> are automatically executed at the disseminated quotation price on the Exchange and reported back to the originating firm.<sup>6</sup> The Exchange proposes to establish a 100 contract AUTO-X guarantee for eligible orders in

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> See Exchange Rule 1080(a).

<sup>5</sup> See Exchange Rule 1080(b)(i).

<sup>6</sup> 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.<sup>7</sup>

The Exchange notes that the American Stock Exchange LLC ("Amex") recently increased its AUTO-X guarantee for options overlying the QQQ to 100 contracts.<sup>8</sup> 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 Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> 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

<sup>7</sup> *Id.*

<sup>8</sup> 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).

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

executions to a larger number of options orders.

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

The Exchange believes that the proposed rule change will not 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.

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

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 filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Phlx has given written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the rule change, or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)<sup>11</sup> of the Act and Rule 19b-4(f)(6)<sup>12</sup> thereunder.<sup>13</sup>

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 seeks to have the proposed rule change become operative immediately to allow the Phlx to begin automatically executing up to 100 contracts for the QQQ options.

The Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change become operative as of March 8, 2001, because investors will have access to automatic execution for a larger number of options orders.<sup>14</sup>

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> The Exchange has requested and the Commission has agreed to waive the five day pre-filing notice requirement.

<sup>14</sup> For purposes only for accelerating the operative date of third proposal, the Commission has considered the proposed rule's impact on

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**

Interested persons are invited to submit written data, views and arguments concerning the forgoing, including whether the proposed rule change is consistent with the Act. Persons making writing 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-01-31 and should be submitted by April 6, 2001.

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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**BILLING CODE 8010-01-M**

### **SMALL BUSINESS ADMINISTRATION**

**[Applicant No. 99000436]**

#### **Windamere Capital Ventures, L.P. Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest**

Notice is hereby given that Windamere Capital Ventures, L.P., 12230 El Camino Real, Suite 300 San Diego California 92130, an applicant for a Federal License under the Small Business Investment Act of 1958, as amended ("the Act"), in connection

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financials which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). Windamere Capital Ventures, L.P. proposes to provide equity financing to Santarus, Inc., 12230 El Camino Real, Suite 300B San Diego California 92130. The financing is contemplated for patent license payment for new product, pre-clinical and clinical product development.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Windamere, LLC and Windamere Venture Partners, Associates of Windamere Capital Ventures, L.P., currently own greater than 10 percent of Santarus, Inc. and therefore Santarus, Inc. is considered an Associate of Windamere Capital Ventures, L.P., as defined in § 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: March 6, 2001.

**Harry E. Haskins,**

*Acting Associate Administrator for  
Investment.*

[FR Doc. 01-6507 Filed 3-15-01; 8:45 am]

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### **SMALL BUSINESS ADMINISTRATION**

#### **Region IV Georgia District Advisory Council; Public Meeting**

The U. S. Small Business Administration, Region IV Georgia District Advisory Council, will hold a public meeting on Friday, April 20, 2001, at 9 a.m., at the Sheraton Hotel, 5351 Simons Boulevard, Columbus, Georgia 31904; to discuss such matters as may be presented by members, staff of the U. S. Small Business Administration, or others present. For further information, write or call Mr. Charles E. Anderson, District Director, U.S. Small Business Administration, 233 Peachtree Street, NE, Suite 1900, Atlanta, Georgia 30303; (404) 331-0266.

**Nancyellen Gentile,**

*Committee Management Officer.*

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