

to the proposed rule change, and none have been received.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-2001-05 and should be submitted by May 21, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44203; File No. SR-Phlx-2001-10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Amend Phlx Rule 237 To Expand the Securities Eligible for eVWAP Trading

April 19, 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 April 5, 2001, 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. On April 13, 2001, the Exchange amended the proposal.³ The Exchange has designated this proposal as one affecting a change in an existing order entry or trading system of the Phlx 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 under Section 19(b)(3)(A) of the Act,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 237, eVWAP Morning Session,⁵ to expand the securities

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See April 12, 2001 letter and attachments from Murray L. Ross, Phlx to Nancy Sanow, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, the Phlx limited the new securities eligible for eVWAP to exchange traded component issues of the Standard & Poor's 500 index, and made other technical, non-substantive changes to the original proposal. For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on April 13, 2001, the date the Phlx filed Amendment No. 1.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ eVWAP was developed by Universal Trading Technologies Corporation, and was approved by the Commission to operate as a facility of the Exchange. See Securities Exchange Act Release No. 41210 (March 24, 1999), 64 FR 15857 (April 1, 1999)(SR-Phlx-96-14). The original pilot program was

eligible for eVWAP trading to include additional exchange traded component issues of the Standard and Poor's ("S&P") 500 index. Specifically, the Exchange proposes to adopt paragraph (b), which states the following:

(b) *Eligible Securities.* The following securities will be eligible for execution in the System:

(i) Exchange listed component issues of the Standard & Poor's 500 index and any exchange listed issue that has been designated by the compiler of such index for inclusion in such index.

(ii) Any of 300 New York Stock Exchange (NYSE) issues selected as follows: the 400 NYSE issues with the highest market capitalization excluding the 100 issues that have the lowest average daily dollar trading volume over 20 days preceding the eligibility determination, with eligibility determined at least semiannually.

The Exchange also proposes technical amendments to Phlx Rule 237 relating to decimal reporting and a minor change to the calculation methodology, as described further below. The complete text of the proposal is available at the 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 Exchange 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 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 expand the number of highly capitalized and actively traded securities eligible to participate in eVWAP pursuant to Phlx Rule 237. The eVWAP is a pre-opening order matching session for the electronic execution of large-sized stock orders at a standardized volume weighted average price ("eVWAP Price").

The proposed expansion of eligible securities would include those exchange

extended until November 30, 2001. See Securities Exchange Act Release No. 43477 (October 23, 2000), 65 FR 64734 (October 30, 2000)(SR-Phlx-00-84).

⁵ 17 CFR 200.30-3(a)(12).

listed and Consolidated Tape Association ("CTA") reported securities that are component issues of the S&P 500 index. This expansion would increase the number of securities available for eVWAP participation by 169 exchange listed securities that are not presently eVWAP eligible, but are component issues of the S&P 500 index. A number of eVWAP participants have requested that the Exchange make these issues eligible for inclusion in the system pursuant to Phlx Rule 237 issue eligibility procedures.

The Exchange notes that the additional eligible securities may not be securities that the Exchange otherwise trades on its equity floor. These securities may instead only be traded through the eVWAP System; thus, they would be traded on an unlisted trading privileges basis, but without trading during regular trading hours pursuant to regular trading rules and thus without the concomitant quoting obligations. Nevertheless, these eVWAP trades will be reported pursuant to the applicable reporting channel, the CTA Tape.

The Exchange notes that the additional securities that it has requested to be eligible for eVWAP matching are all high capitalization issues, enjoying active trading volume. The S&P 500 index is a key benchmark of large capitalization securities followed actively by institutional money managers and investment fiduciaries that seek to trade component issues relative to their index weightings. Certain of these market participants, among others, have indicated that they see considerable utility in extending the benefits now afforded to a limited group of listed issues to a more expansive eVWAP eligibility list, including all exchange listed component issues of the S&P 500 index. Additionally, the eligibility of these additional issues is critical to developing eVWAP order flow connected with certain index-linked stock basket transactions.

The Exchange also notes that it has eliminated the exclusion of issues that have a market price of \$200 or more per share in determining eligibility for listed issues. Originally the \$200 market price exclusion was designed to eliminate very highly priced issues such as Washington Post and Berkshire Hathaway. The Exchange believes that the existing dollar volume criteria has and will continue to eliminate very highly priced issues which possess limited trading activity outside of the system while permitting certain actively traded high priced issues to be eVWAP eligible.

The Exchange notes that several major broker-dealers sponsor alternative

trading systems, which currently provide crossing networks that offer the opportunity to trade any listed or Nasdaq reported securities. For example, ITG (POSIT) and Instinet operate crossing systems that offer trade matching in thousands of reported securities without regard to capitalization or dollar volume. As a competitive matter, the Phlx believes that eVWAP needs to offer, at a minimum, the component securities of the S&P 500 index and those issues among the largest NYSE securities by market capitalization weight.

The Exchange also has amended paragraph (g) of Phlx Rule 237 to reflect decimalization of price reporting as well as the ability to recognize and include only those trades occurring during the regular primary market trading session in the eVWAP calculation. In this regard, recent modifications to the CTA Networks A and B now distinguish trade reports reflective of executions during regular trading hours as differentiated from those occurring in after hours trading sessions, which are reported with "T" indicators. The latter trades are not intended to be included in the eVWAP calculation. Additionally minor technical amendments to Phlx Rule 237 to eliminate references to UTS and insert eVWAP have been made.⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)⁷ of the Act in general, and Section 6(b)(5)⁸ in particular in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices and protect investors and the public interest by expanding the number of highly capitalized, actively traded securities eligible for eVWAP trading.

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

The Exchange 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.

⁶ Previously all references to UTS were to be eliminated and replaced by eVWAP, however, two references were not changed. See Securities Exchange Act Release No. 42702 (April 19, 2000), 65 FR 24528 (April 26, 2000)(SR-Phlx 00-19).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(5) of Rule 19b-4 thereunder,¹⁰ because it effects a change in an existing order entry or trading system of the Phlx 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. 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 foregoing, including whether the proposal 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 Exchange. All submissions should refer to file number SR-Phlx 2001-10, and should be submitted by May 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(5).

¹¹ 17 CFR 200.30-3(a)(12).