

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44245; File No. SR-Phlx-2001-44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending the Pilot Program for Exchange Rule 98, Emergency Committee Until July 31, 2001

May 1, 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 12, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with 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 is proposing to extend the pilot program period for Rule 98, Emergency Committee until July 31, 2001. No changes to the existing rule language are being proposed.

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

On December 23, 1999, the Commission approved amendments to Rule 98, Emergency Committee (the "Committee"), which updated the composition of the Committee to reflect the current governance structure of the Exchange, on a 120-day pilot basis.⁵ The pilot has been extended three times, most recently to April 30, 2001.⁶ The pilot program is being extended again to July 31, 2001 as the Exchange considers other changes to the composition of the Committee.

The Exchange originally proposed to amend Rule 98, Emergency Committee, by updating the composition of the Committee to correspond with previous revisions to the Exchange's governance structure,⁷ and by deleting a provision authorizing the Committee to take action regarding CENTRAMART, an equity order reporting system which is

no longer used on the Exchange Equity Floor.

The Committee was formed in 1989⁸ prior to the aforementioned changes to the Exchange's governance structure. The original proposed rule change, approved by the Commission, deleted the word "President" from the rule, as the Exchange no longer has a "President," and included the Exchange's On-Floor Vice Chairman⁹ as a member of the Committee.

Thus, Rule 98 specifies the composition of the Emergency Committee to include the following individuals: the Chairman of the Board of Governors; the On-Floor vice Chairman of the Board of Governors; and the Chairmen of the Options Committee, the Floor Procedure Committee, and the Foreign Currency Options Committee.

The staff of the Commission has requested that the Exchange file the instant proposed rule change to extend the pilot program through July 31, 2001 so that the Committee will reflect the current governance structure of the Exchange and will be in place to take necessary and appropriate action to respond to extraordinary market conditions or other emergencies.¹⁰ The extension of the pilot program will also allow the Exchange the necessary time to propose changes to the Committee's structure to meet the Commission's concerns about whether the Committee ensures that all interests of the Exchange (e.g., On-Floor or Off-Floor) are adequately represented by the Committee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6¹¹ of the Act in general, and with Section 6(b)(5)¹² of the Act in specific, in that it is designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, by updating the composition of the Emergency Committee to reflect the

⁵ Securities Exchange Act Release No. 42272 (December 23, 1999), 65 FR 153 (January 3, 2000)(SR-Phlx-99-42). In the approval order, the Commission requested that the Exchange examine the operation of the Committee to ensure that the Committee is not dominated by any one Exchange interest (e.g., On-Floor or Off-Floor interests). The Commission requested that the Exchange report back to the Commission on its views as to whether the Committee structure ensures that all Exchange interests are fairly represented by the Committee.

⁶ Securities Exchange Act Release No. 42898 (June 5, 2000), 65 FR 36879 (June 12, 2000)(SR-Phlx-00-41), extending the pilot program until August 21, 2000; Securities Exchange Act Release No. 43169 (August 17, 2000), 65 FR 51888 (August 25, 2000)(SR-Phlx-00-76), extending the pilot program until November 17, 2000. On July 14, 2000, the Exchange filed a proposed rule change to effect the amendments on a permanent basis. SR-Phlx-00-63 (filed July 14, 2000). In SR-Phlx-00-63 the Exchange also enclosed the Exchange's views as to whether the Committee structure ensures that all Exchange interests are fairly represented by the Committee. Because the Exchange is considering changes to the Committee, the Commission expects SR-Phlx-00-63 to be withdrawn. In November, 2000, the pilot program was extended again until April 30, 2001. Securities Exchange Act Release No. 43614 (November 22, 2000), 65 FR 75332 (December 1, 2000).

⁷ See Securities Exchange Act Release No. 38960 (August 22, 1997), 62 FR 45904 (August 29, 1997)(SR-Phlx-97-31).

⁸ See Securities Exchange Act Release No. 26858 (May 22, 1989), 54 FR 23007 (May 30, 1989) (SR-Phlx-88-36).

⁹ See also Exchange By-Law, Article IV, Section 4-2.

¹⁰ Previously, the Exchange has described "extraordinary market or emergency conditions" as, among other things, a declaration of war, a presidential assassination, an electrical blackout, or events such as the 1987 market break or other highly volatile trading conditions that require intervention for the market's continued efficient operation. Letter dated March 15, 1989, from William W. Uchimoto, General Counsel, Exchange, to Sharon L. Itkin, Esquire, Commission, Division of Market Regulation.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6). The Exchange filed the pre-filing notice required by Rule 19b-4(f)(6) by filing a written description of the proposed rule change and the text of the proposed rule change on April 3, 2001.

current governance structure of the Exchange, and by continuing to provide a regular procedure for the Exchange to take necessary and appropriate action to respond to extraordinary market conditions or other emergencies.¹³

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

The Exchange does not believe that the proposed rule change will result in 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 foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(4)¹⁵ thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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.

The Commission finds that it is appropriate to accelerate the effective date of the proposed rule change and to permit the proposed rule change to become immediately effective because the proposal simply extends a previously approved pilot program until July 31, 2001. No changes to Rule 98 are being proposed at this time and the Commission has not received any comments on the pilot program. In addition, the Exchange appropriately

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

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

filed a pre-filing notice as required by Rule 19b-4(f)(6).¹⁶

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 the File No. SR-Phlx-2001-44 and should be submitted by May 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44259; File No. SR-Phlx-2001-41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Eliminating Equity Trading Floor Specialist Fees for the Execution of PACE Orders on the Opening

May 4, 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 18, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange

¹⁶ 17 CFR 140.19b-4(f)(6).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx.³ The Commission is publishing this notice to solicit comments on 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 eliminate equity trading floor specialist fees for each PACE transaction for orders entered before the opening of trading.⁴ Specifically, the PACE specialist charge of \$.20 per Phlx specialist trade for PACE executions would be eliminated.

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

1. Purpose

The purpose of the proposed rule change is to alleviate fee burdens on specialists by eliminating specialist fees for PACE trades executed by the specialist on the opening. Presently, PACE orders, including those executed on the opening, are charged a PACE specialist fee of \$.20 per trade, in addition to other costs, such as Stock Clearing Corporation of Philadelphia trade processing/clearing fees and Section 31 fees.

Exchange specialists have many responsibilities, including the maintenance of fair and orderly markets. Phlx specialists provide PACE orders specific guarantees enumerated in Phlx

³ The Phlx originally submitted the proposed rule change on April 2, 2001. On April 18, 2001, the Phlx submitted a new Form 19b-4, which replaces and supersedes the original filing in its entirety. See letter from Diana Tenenbaum, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 17, 2001.

⁴ PACE is the Philadelphia Stock Exchange's Automated Communication and Execution System. It is the Exchange's order routing, delivery, execution, and reporting system for its equity trading floor. See Phlx Rule 229.