

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Sam Duraiswamy (telephone 301/415-7364) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 31, 2001.

**James E. Lyons,**

*Associate Director for Technical Support,  
ACRS/ACNW.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44368; File No. SR-NYSE-00-31]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 36.30 and Rule 104A.50

May 30, 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 July 3, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange submitted an amendment to the proposed rule change on May 21, 2001.<sup>3</sup> The Commission is publishing this notice to solicit comments on the

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange submitted a new Form 19b-4, which replaces and supersedes the original filing in its entirety ("Amendment No. 1"). Amendment No. 1 withdraws the proposed amendments to NYSE Rule 36.20 in the original filing that would have permitted certain off-floor communications by members on the floor. The NYSE has stated that these amendments will be subject to a separate filing. Amendment No. 1 also amends proposed NYSE Rule 36.30A to clarify the manner in which Exchange specialists may communicate proprietary orders in foreign specialty stock from their post to off-floor broker-dealers. Finally, Amendment No. 1 amends proposed NYSE Rule 36.30C to include in the definition of foreign security depositary shares that represent a foreign company's publicly traded security.

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 proposed rule change consists of amendments to NYSE Rule 36.30, concerning communications from specialists' posts on the floor of the Exchange, and NYSE Rule 104A.50, concerning specialists reporting requirements. The text of the proposed rule change is set forth below. Deletions are in brackets. Additions are in italics.

#### Rule 36 Communications Between Exchange and Members' Offices

\* \* \* \* \*

.30 Specialist Post Wires—[With the approval of the Exchange, a specialist unit may maintain a telephone line at its stock trading post location to the off-Floor offices of the specialist unit or the unit's clearing firm. Such telephone connection shall not be used for the purpose of transmitting to the Floor orders for the purchase or sale of securities, but may be used to enter options or futures hedging orders through the unit's off-Floor office or the unit's clearing firm, or through a member (on the floor) of an options or futures exchange.]

*A. With the approval of the Exchange, a specialist unit may maintain a communication link at its stock trading post location:*

1. *To the off-Floor office of the specialist unit or the unit's clearing firm which may be used for the purpose of entering options and futures hedging orders, and orders in a foreign security;*

2. *To a member (on the Floor) of an options or futures exchange for the purpose of entering options and futures hedging orders;*

3. *To an automated trading system registered as a broker-dealer under the Securities Exchange Act of 1934 (a "registered broker-dealer") or under the auspices of a registered broker-dealer or under the auspices of a foreign broker-dealer subject to and in accordance with Rule 15a-6 under the Securities Exchange Act of 1934 ("Rule 15a-6") for the purpose of entering orders in a foreign security; and*

4. *To a registered broker-dealer or a foreign broker-dealer subject to and in accordance with Rule 15a-6 for the purpose of entering orders in a foreign security.*

*B. No such communication link shall be used for the purpose of transmitting to the Floor orders for the purchase or sale of securities.*

*C. For purposes of the Rule, a foreign security is a security traded on the Exchange which is a foreign ordinary security, a depositary receipt or a depositary share that represents a foreign company's publicly traded security. A specialist registered in the depositary receipt or share may enter an order either in such security or the related ordinary security. A specialist registered in the ordinary security may enter an order in such security, or where applicable, a related depositary receipt or share.*

\* \* \* \* \*

#### Rule 104A Specialists—General

\* \* \* \* \*

.50 Equity Trading Reports—Every specialist (including relief specialists) must keep a record of purchases and sales initiated on the Floor (including purchases and sales resulting from commitments or obligations to trade issued from the Exchange through ITS or any other Application of the system), in stocks in which he is registered, for an account in which he has an interest. Specialists must also maintain records of purchases and sales in the Exchange's off-hours trading sessions. Such record must show the sequence in which each transaction actually took place, the time thereof, and whether such transaction was at the same price or in what respect it was at a different price in relation to the immediately preceding transaction in the same stock. The price designations for transactions made in another market center through ITS or any other applications of the System are to be determined from the immediately preceding transaction price on the Exchange at the time the commitment or obligation to trade is issued. Specialists and relief specialists are required to report such transactions in such automated format and with such frequency as may be prescribed by the Exchange. Paragraph 2104.12 sets forth circumstances under which specialists who maintain investment accounts in specialty stocks are required to submit an equity trading data report.

Options trading data reports—Every specialist (including relief specialists) must keep a record of all options purchases and sales to hedge his speciality stock positions as permitted by Rule 105 and must report such transactions in such automated format and with such frequency as may be prescribed by the Exchange.

*Foreign securities reports—Every specialist (including relief specialists) must keep a record of all purchases and sales of foreign securities (as defined in Rule 36.30) for an account in which he has an interest. Specialists and relief specialists are required to report such transactions in such automated format and with such frequency as may be prescribed by the Exchange.*

Inquiries.—Inquiries in connection with these reports should be addressed to Market Surveillance, 11 Wall Street, 10th Floor, telephone 656-6755.

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### 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

NYSE Rule 36 (communications Between Exchange and Members' Offices) governs the establishment of telephone or electronic communications between the Exchange trading floor and any other location. The Exchange proposes to amend Rule 36 with respect to communication links between specialist posts and off floor locations.

*Specialists Post Wires.* NYSE Rule 36.30 governs the use of telephone lines at a specialist unit's post. The rule currently permits telephone lines from the post to the unit's off-floor offices and to the unit's clearing firm. The rule also permits specialists to have telephone lines to the floor of an options or futures exchange for the purpose of entering hedging orders on the floors of those exchanges.

The Exchange proposes to amend NYSE Rule 36.30 to more clearly identify the types of communications that may emanate from the post. The words "communication link" would replace "telephone" to encompass a wider range of communication methods. The types of communications would be expanded to give the specialist the ability to enter orders in foreign stocks directly from the post. In that regard, the rule would permit a specialist to enter orders to purchase or sell foreign securities through a broker-dealer registered with the Commission or directly with a foreign broker-dealer pursuant to Rule 15a-6 under the Act.<sup>4</sup> The prohibition on receiving orders for the purchase or sale of securities at the post would be retained. The term "foreign security" would be defined to include a foreign ordinary security, a depositary receipt or a depositary share representing a foreign security.

At the end of 1999, there were a total of 394 foreign issues listed on the Exchange. A total of 16.5 billion shares of foreign stock traded on the Exchange, representing an increase of 11% above 1998 totals. As foreign listing and trading expands, issues related to foreign securities have arisen in discussions between the Exchange and specialists. For example, in 2000, amendments to NYSE Rule 104 were submitted to the Commission to permit, without first obtaining floor official approval, specialists to effect certain stabilizing transactions in a foreign

stock to achieve price parity with that stock on its home country market.<sup>5</sup>

Similarly, the Exchange believes that specialists may need to act quickly to buy or sell or obtain information about a foreign security specialty stock in situations where the home country or another market represents the best opportunity to do so. The Exchange proposes to amend NYSE Rule 36.30 to permit specialists to have any commercially available communication link at the post over which it can communicate directly to place an order in a foreign security for the specialists's own account or seek information on the current market for a foreign security.<sup>6</sup> The communication links could be used to receive information on stocks, data for the U.S. or foreign markets, vendor services or news. The receipt of information would not be restricted, and could include data from competing markets. The communication link would not be used to transmit orders to specialists for execution on the Exchange or to give nonmembers market look information. Specialist units would continue to have the ability to transmit hedging orders in options or futures from the post to its off-floor offices, its clearing firm, or a member on the floor of an options or futures exchange.

The Exchange believes that the availability of all communication links to specialists should be permitted. The proposed rule change, however, would not permit orders to be transmitted over these links either into the floor or to another market, except by specialists in the circumstances outlined in NYSE Rule 36.30.

*Foreign Stock Transaction Reports.* The Exchange also proposes to amend NYSE Rule 104A.50 to require specialists to record and report to the Exchange the details of all proprietary transactions executed by the specialist unit away from the Exchange in foreign securities. Specialists would be informed that the reports would be required to be submitted on Form 81, the electronic reporting mechanism already used by specialists to report

<sup>5</sup> See File No. SR-NYSE-00-30. This proposal has not yet been approved by the Commission. In this filing the Exchange noted that the proposed change in SR-NYSE-2000-30 to NYSE Rule 104 would give specialists the ability to react quickly to changes in the price of foreign securities on the Exchange based on price changes in the primary market for the foreign security. The Exchange believes that this would enhance the specialist's ability to maintain markets that are fair and orderly for these stocks.

<sup>6</sup> Proposed Rule 36.30A states that any such purchase or sale must be through a broker-dealer registered with the Commission or directly with a foreign broker-dealer pursuant to Rule 15a-6 under the Act.

proprietary transactions in speciality stocks.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>7</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 proposed rule change supports the mechanism of free and open markets by providing for increased means by which communications to and from the floor of the Exchange may take place, while continuing to prohibit entry of orders from off the floor directly to the post, or to the point of sale.

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

The Exchange does not believe that the proposed rule change, as amended, 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 not solicited or received written comments on the proposed rule change.

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

Within 35 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 90 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 Exchange consents, the Commission will:

A. By order approve the 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth

<sup>4</sup> 17 CFR 240.15a-6.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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 NYSE. All submissions should refer to the File No. SR-NYSE-00-31 and should be submitted by June 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44369; File No. SR-Phlx-2001-26]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to ROT Vocalization Requirements for Options Quotations

May 30, 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 March 5, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. 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 amend Commentary .01 to Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market ("AUTOM") and Automatic Execution System

("AUTO-X"), to add an express vocalization requirement for Phlx Registered Options Traders ("ROT's")<sup>3</sup> whose quotation for a particular option series is different from the disseminated quote. The proposal also would codify the Exchange's policy that the disseminated market is deemed to represent the quotation of all ROTs in that option, unless otherwise indicated pursuant to Phlx Rule 1080. The proposed rule change would be set forth in new subsection (c) of Commentary .01. The text of the proposed rule change is set forth below. New language is in italics.

#### Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)

(a)-(j) No change.  
Commentary:

.01

(a) Automatic Quotation (Auto-Quote) is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations.

(b) [RESERVED]

(c) *The disseminated market (whether by Auto-Quote or specialized quote feed) is deemed to represent the quotations of all ROTs in that option unless a ROT has expressly indicated otherwise in a clear and audible manner, respecting either a specific series, the class or the option (specifying LEAPs), and with sufficient time for the specialist to take action to update the quote if necessary.*

(d) If options trading systems throttle quotations for at least three minutes, the Chairman of the Board of Governors or his designee may, for capacity management purposes, mandate that the Auto-Quote be set to update quotations based on a certain minimum movement in the underlying security for: (i) all options; (ii) index options only; or (iii) certain specified options, taking into account certain factors that may include, but are not limited to, the price of the underlying security, volatility in the underlying security, or whether there has been any trading volume over the last two trading days. Such mandated minimum setting may continue for a period of 15 minutes, and may be continued every 15 minutes thereafter, provided that the Exchange's options trading systems are throttling

quotations at the end of each such 15-minute period.

\* \* \* \* \*

#### 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

The purpose of the proposed rule change is to clarify that the quote disseminated by the Exchange's Auto-Quote system<sup>4</sup> or by a specialist's proprietary system that interfaces with AUTOM ("Specialized Quote Feed"), which electronically prices options, is deemed to be the quote of all ROTs in the crowd unless the ROT has vocalized a different quote in a clear and audible manner with sufficient time for the specialist to take action to update the quote, if necessary.<sup>5</sup>

On September 11, 2000, the Commission issued an order<sup>6</sup> that requires four of the five options exchanges, including the Phlx to adopt new, or amend existing, rules to include any practice or procedure, not currently authorized by rule, whereby market makers determine by agreement the spreads or option prices at which they will trade any option, or the allocation of orders in that option.<sup>7</sup> Specifically, the Order required by the Exchange to file by March 12, 2001, draft proposed

<sup>4</sup> Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations.

<sup>5</sup> The ROT must vocalize a different quote before an order enters the system. If an ROT believes that he or she has been unfairly allocated a portion of the order, he or she can challenge the allocation pursuant to Phlx Rule 124. Telephone call between Rick Rudolph, Counsel, Phlx, Terri Evans, Special Counsel, Division of Market Regulation ("Division"), Commission, and Sonia Patton, Staff Attorney, Division, Commission (May 24, 2001).

<sup>6</sup> See Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000 ("Order")).

<sup>7</sup> See Section IV.B.j. of the Order.

<sup>8</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>3</sup> A ROT is 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 options for his own account. See Phlx Rule 1014(b).