

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Written comments from participants or others have not been solicited or received on the proposed rule change. All participants will be informed of the proposed rule change by an Important Notice.

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

The Commission finds that allowing DTC to require participants to set up separate subaccounts solely for the settlement of Nasdaq Europe trades and to authorize DTC to provide settlement information to Nasdaq Europe is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to clearing agencies. Specifically, the Commission believes that the proposal is consistent with section 17A(b)(3)(F) because it will facilitate the prompt and accurate clearance and settlement of securities transactions by allowing for the settlement at DTC of Nasdaq Europe trades in DTC-eligible securities.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because approval prior to the thirtieth day of the publication will allow DTC to settle trades in DTC-eligible securities executed on the Nasdaq Europe when Nasdaq Europe begins trading such securities, which it is scheduled to do on Friday, June 8, 2001.

**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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-2001-08 and should be submitted by July 3, 2001.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>3</sup> that the proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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**BILLING CODE 8010-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44395; File No. SR-Phlx-2001-46]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. ("Phlx"), Relating to a Reduction of the Minimum size of PACE<sup>1</sup> Orders that Must Be Automatically Guaranteed by Equity Specialists Pursuant to Phlx Rule 229**

June 6, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> notice is hereby given that on April 23, 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, II, and III below, which Items have been prepared by the Exchange. The Phlx filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(5) thereunder.<sup>4</sup> Pursuant to Rule 19b-4(f)(5), the Phlx has designated this proposal as one effecting a change in an existing order-entry or trading system of the Phlx that does not: (1) Significantly affect the protection of investors or the public interest, (2) impose any significant burden on competition, or (3) significantly have the effect of limiting

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

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

<sup>1</sup> PACE is the Philadelphia Stock Exchange's Automatic Communication and Execution System. It is the Exchange's order routing, delivery, execution and reporting system for its equity trading floor. See Rule 229, Philadelphia Stock Exchange Guide.

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 17 CFR 240.19b-4(f)(5).

the access to or availability of the system. As such, the proposed rule change is immediately 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 Phlx, pursuant to Rule 19b-4 under the Act,<sup>5</sup> proposes to amend Phlx Rule 229 to reduce the minimum automatic execution size of PACE orders for equity specialists from 599 shares to 299 shares.

The text of the proposed rule change is as follows.

*(Proposed new language is italicized; proposed deletions are in brackets)*

**Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System (PACE)**

**Execution of Market Orders**

.05 Public Order Exposure System— Subject to Supplementary Material Section .07, all round-lot market orders up to 200 [500] shares and PRL market orders up to 299 [599] shares will be stopped at the PACE Quote at the time of entry into the system ("Stop Price") and be subject to a delay of up to 30 seconds from being executed in order to receive an opportunity for price improvement. If such market order is not executed within the 30 second window, the order will be automatically executed at the Stop Price. If the PACE Quote at the time of order entry into the system reflects a 1/8 point spread or less (the difference between the best bid and offer) for equities trading in fractions, or .05 or less for equities trading in decimals, pursuant to Rule 134 or 125, that order will be executed immediately without the 30 second delay.

Subject to these procedures, the specialist may voluntarily agree to execute round-lot market orders of a size greater than 200 [500] shares and PRL market orders of a size greater than 299 [599] shares upon entry into the system. Where the specialist has voluntarily agreed to execute market orders greater than 299 [599] shares and the market order size is greater than 299 [599] shares, but less than or equal to the size of the PACE Quote, the order is automatically executable at the PACE Quote; if such order is greater than the size of the PACE Quote, the order shall [manually] receive an execution at the PACE Quote up to the size of the PACE Quote, *either manually or automatically (once this feature is implemented)* with the balance of the order receiving a professional execution, in accordance with Supplementary material .10(b) below; provided that the specialist may guarantee an automatic execution at the PACE quote up to the entire size of such specialist's automatic execution guarantee (*regardless of the size of the PACE Quote*).

\* \* \* \* \*

<sup>5</sup> 15 U.S.C. 78s(b)(4).

.07

(a) Member organizations which enter market orders after the opening may elect to have such orders executed

(i) in accordance with the procedures set forth in Supplementary Material Section .05 or,

(ii) if such execution price would be outside the New York market high-low range for the day manually at or within the New York market high-low range of the day.

(b) Market orders (round-lots of 300 [600] to 2000 shares or such greater size which the specialist agrees to accept and PRL's of 301 [601] to 2099 shares or such greater size which the specialist agrees to accept) which are entered after the opening and which the specialist has not agreed to accept for automatic execution shall not be subject to the execution parameters set forth in Supplementary Material .05 and shall be executed in accordance with Supplementary Material .10(b) and other applicable rules of the Philadelphia Stock Exchange; provided, however, that the odd-lot portion of PRL's of 301 [601] or more shares shall be executed at the same price as the round-lot-portion. In the case of a PRL order, the round-lot portion(s) of which is executed at more than one price, the odd-lot portion shall be executed at the same price as the first round-lot portion is executed.

(c) Unchanged

\* \* \* \* \*

Execution of Limit Orders

\* \* \* \* \*

.10

(a) In the case of stocks for which the PACE Quote bid is less than \$1.00, the provisions of paragraph .10(b) shall apply.

In the case of stocks for which the PACE quote bid is \$1.00 or more:

(i) Marketable Limit Orders—round-lot orders up to 200 [599] shares and the round-lot portion of PRL limit orders up to 299 [599] shares which are entered at the PACE Quote shall be executed at the PACE Quote. Such orders shall be executed automatically unless the member organization entering orders otherwise elects. Specialists may voluntarily agree to execute marketable limit orders greater than 299 [599] shares. Where the specialist has voluntarily agreed to automatically execute marketable limit orders greater than 299 [599] shares and the order size is greater than 299 [599] shares, but less than or equal to the size of the PACE Quote, the marketable limit order is automatically executable at the PACE Quote; if the order size is greater than 299 [599] shares and greater than the size of the PACE Quote, the marketable limit order shall manually receive an execution at the PACE Quote up to the size of the PACE Quote, with the balance of the order receiving a professional execution, in accordance with Supplementary Material .10(b) below; provided that the specialist may guarantee an automatic execution at the PACE Quote up to the entire size of such specialist's automatic execution guarantee.

(ii)–(iii): Unchanged.

(b)–(c): Unchanged.

## 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. 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

The purpose of this proposed rule change is to reduce the equity specialists' minimum automatic execution size for PACE orders, thereby reducing the amount of orders that qualify for an automatic execution guarantee, pursuant to various provisions of Exchange Rule 229. According to the Phlx, the proposed rule change is intended to address the equity specialist's hardship in the new decimal environment. Specialists indicate that the transition to trading in decimal increments, rather than in fractions, has resulted in a wider range of quoted prices (more ticks), as well as an increase in small-sized bids and offers made at a particular price. Such bids and offers (which can be for as little as 100 shares) qualify, regardless of their size, to become the National Best Bid or Offer ("NBBO"), also known for PACE purposes as the "PACE Quote."

PACE provides certain execution guarantees to eligible orders. Currently, with respect to market orders, Rule 229, Supplementary Material .05, provides that round-lot market orders for up to 500 shares (and partial round-lot orders<sup>6</sup>—"PRLs"—up to 599 shares) are automatically entitled to the NBBO price ("stopped") as of the time of entry into the PACE system. In addition, Supplementary Material .05 provides that those orders will be subject to a 30 second delay in execution in order to allow for the opportunity for manual price improvement.

A specialist may voluntarily agree to execute round-lot market orders greater than 500 shares (and PRL market orders greater than 599 shares). In addition, Supplementary Material .05 states that if a specialist agrees to execute market orders greater than 599 shares, and the order size is smaller or equal to the size of the PACE Quote, the order is

automatically executable at the PACE Quote. If the order size is greater than the PACE Quote, the order is manually handled by the specialist, who executes it at the PACE Quote up to the portion equal to the PACE Quote size, with the balance receiving a professional manual execution.<sup>7</sup> Regardless of the size of the PACE Quote, however, the specialist may, under Supplementary Material .05, choose to guarantee automatic execution at the PACE Quote up to the entire size of his automatic execution guarantee.<sup>8</sup> Thus, when the specialist's automatic execution guarantee is higher than 599 shares, whether an order automatically executes at the PACE Quote depends on the size of the PACE Quote. This size-sensitivity is discussed further below.

Supplementary Material .07(b) currently provides that market orders consisting of round-lot orders of 600 to 2,000 shares and PRLs of 601 to 2,099 shares (or any greater size which the specialist agrees to accept), which are entered after the opening and not accepted for automatic execution by the specialist, will be handled manually in accordance with the requirements of Supplementary Material .10. Supplementary Material .07 further provides that the odd-lot portion of PRLs of 601 or more shares shall be executed at the same price as the round-lot portion.

With respect to marketable limit orders, Rule 229, Supplementary Material .10(a)(i) provides that round-lot marketable limit orders up to 500 shares (and partial round-lot marketable limit orders up to 599 shares) which are entered at the PACE Quote shall be executed at the PACE Quote, and executed automatically if the member organization entering the order so elects. Although the current minimum automatic execution size (for both market and marketable limit orders) is 599 shares (meaning all securities on PACE are subject to an automatic execution size of at least this amount), specialists may establish higher sizes.<sup>9</sup>

Together, these provisions of Rule 229 guaranteeing the NBBO to certain eligible PACE orders have become more

<sup>7</sup> See Rule 229, Supplementary Material .10(a).

<sup>8</sup> Following a telephone conversation on May 30, 2001 between Edith Hallahan, Deputy General Counsel, Exchange, and Heidi Pilpel, Special Counsel, Commission, the Exchange represented that the specialist sets his automatic execution guarantee by filling out an Exchange form to that effect, effective as of the next business day, except when unusual circumstances occur, such as a fast market, in which case the specialist is allowed to request an immediate change of his automatic guarantee, upon floor official approval.

<sup>9</sup> The minimum delivery size is 2,099 shares. See note 8 above explaining how the specialist sets its minimum execution guarantee.

<sup>6</sup> A partial round-lot order for the purposes of Rule 229 is a combined round-lot and odd-lot order.

onerous to equity specialists in today's marketplace when required to guarantee a minimum of 599 shares. Specifically, specialists face situations where bids and offers as small as 100 shares trigger the PACE Quote guarantees described above. Small size quotes, however, might not necessarily reflect the overall market price at a given time.

Nevertheless, under the PACE rule, in certain circumstances it is the specialist's duty to give the NBBO price, regardless of the size of the NBBO. Particularly, when the specialist's guarantee is set at the current minimum of 599 shares, the size of the PACE Quote does not affect the price at which orders up to 599 shares are executed.

Thus, the Exchange hereby proposes to decrease the minimum automatic execution size from 599 to 299 shares, which should decrease the amount of orders that qualify for the above automatic price guarantee features; and should allow the specialist to choose to handle more orders manually, and voluntarily, in accordance with Supplementary Material .05 and .10, thereby alleviating some of the burdens of mandatory execution guarantees. In addition, when an order is greater than the size of the PACE Quote, the proposal will offer the specialist the option to give the order an execution at the PACE Quote, either manually or automatically, up to the PACE Quote size. In other words, the specialist may choose manual or automatic execution up to the PACE Quote size portion of his order, but it remains his choice, just as he may still choose to guarantee an automatic execution at the PACE Quote for orders up to the size of his elected "automatic execution guarantee," as stated in Supplementary Material .05. As such, the automatic execution guarantee will be more sensitive to the size of the PACE Quote.

For these reasons, the Exchange believes that this proposal is consistent with section 6(b) of the Act in general, and furthers the objectives of section 6(b)(5) in particular, in that it should promote just and equitable principles of trade, by fostering fair and orderly markets while relieving specialists of the duty to execute certain orders at a guaranteed price, where that price would otherwise not be available for the size that the specialist must guarantee.

#### *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 the Proposed Rule Change Received from Members, Participants or Others*

No written comments were received.

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

The foregoing proposed rule change has been designated as a rule effecting a change in an existing order-entry or trading system of a self-regulatory organization, pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(5) thereunder. Accordingly, the proposal will take effect upon filing with the Commission. 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 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-2001-46 and should be submitted by July 3, 2001.<sup>10</sup>

<sup>10</sup> The Commission notes the Exchange's obligation to submit to the Commission (individually or jointly with other exchanges) a study regarding the impact of decimal pricing on systems capacity, liquidity, and trading behavior ("Decimals Study"), pursuant to a Commission Order dated June 8, 2000. See Securities Exchange Act Release No. 42914 (June 8, 2000); 65 FR 38010 (June 19, 2000), as amended by Securities Exchange Act Release No. 44336 (May 22, 2001); 66 FR 29368 (May 30, 2001) (extending the deadline to submit the Decimals Study). The Commission expects the

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-M**

#### **SMALL BUSINESS ADMINISTRATION**

##### **[Declaration of Disaster #3336]**

##### **State of Kansas; Amendment No. 1**

In accordance with a notice received from the Federal Emergency Management Agency, dated May 1, 2001, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as occurring between April 21, 2001 and continuing through May 1, 2001. All other information remains the same, i.e., the deadline for filing applications for physical damage is June 26, 2001 and for economic injury the deadline is January 28, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 6, 2001.

**Allan I. Hoberman,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 01-14751 Filed 6-11-01; 8:45 am]

**BILLING CODE 8025-01-P**

#### **SMALL BUSINESS ADMINISTRATION**

##### **[Declaration of Disaster #3343]**

##### **State of Ohio**

Scioto County and the contiguous counties of Adams, Jackson, Lawrence and Pike in the State of Ohio; and Greenup and Lewis Counties in the Commonwealth of Kentucky constitute a disaster area due to damages caused by severe thunderstorms, high winds and flooding which began on May 17, 2001 and continued through May 26, 2001. Applications for loans for physical damage may be filed until the close of business on August 3, 2001 and for economic injury until the close of business on March 4, 2002 at the address listed below or other locally announced locations:

U.S. Small Business Administration,  
Disaster Area 2 Office, One Baltimore  
Place, Suite 300, Atlanta, GA 30308  
The interest rates are:

Exchange to evaluate in the Decimals Study the effect of amended Rule 229 on equity specialists' handling of customer limit orders for more than 299 shares.

<sup>11</sup> 17 CFR 200.30-3(a)(12).