

("EFPA") that correspond to the increased Minor Rule Plan fines.

The Exchange believes that adoption of the proposed rule change will serve to significantly strengthen the ability of the Exchange to carry out its oversight responsibilities as a self-regulatory organization. The rule also should aid the Exchange in carrying out its compliance and surveillance functions.

2. Basis

The Exchange believes that this proposal is consistent with section 6(b)⁴ of the Act, in general, and further the objectives of section 6(b)(5)⁵ and 6(b)(6),⁶ in particular, in that it is designed to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade and provides that Exchange members shall be appropriately disciplined for violations of the rules of the Exchange.

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

The Exchange does not believe that the proposed rule change 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

Written comments on the proposed rule change were neither solicited nor received.

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 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 it 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 will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2001-19 and should be submitted by July 9, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44404; File No. SR-Phlx-2001-51]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Increasing the Maximum Guaranteed AUTO-X Size to 100 Contracts

June 11, 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 May 21, 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.³ 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 proposed to amend Phlx Rule 1080(c) to increase to 100 contracts the maximum order size of option contracts that are eligible to be executed on the Exchange's automatic execution system ("AUTO-X"), which is part of the Exchange's Automated Options Market ("AUTOM") System.⁴ Currently, customer market and marketable limit orders of up to 75 contracts are eligible for AUTO-X.⁵

Phlx also proposed to delete a section of Phlx Rule 1080(c) that states that orders for OTC Prime Index ("OTX") options are eligible for AUTO-X execution for up to 100 contracts.

Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed deletions are in brackets.

* * * * *

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

(a)-(b) No change.

(c) AUTO-X-AUTO-X is a feature of AUTOM that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO-X automatically executes eligible orders using the Exchange disseminated quotation and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO-X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO-X is not engaged. An order may also be executed partially by AUTO-X and partially manually.

The Options Committee may for any period restrict the use of AUTO-X on the Exchange in any option or series. Currently, orders up to [75] 100 contracts, subject to the approval

⁴ AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually or routed to AUTOM's automatic execution feature, AUTO-X, if they are eligible for execution on AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

⁵ See Securities Exchange Act Release No. 43515 (November 3, 2000), 65 FR 69114 (November 15, 2000) (File No. SR-Phlx-99-32) (order approving maximum order size eligibility of 75 contracts for AUTO-X).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78f(b)(6).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

of the Options Committee, are eligible for AUTO-X. [With respect to OTC Prime Index ("OTX") options, orders of up to 100 contracts are eligible for AUTO-X.] 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 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 Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(c)(i)(A)-(E) No change.

(d)-(j) No change.

Commentary. No change.

* * * * *

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 propose 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 Items 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 Phlx proposes to increase the maximum order size for eligibility for AUTO-X from 75 contracts to 100 contracts.⁶ Under the rules of the Exchange, through AUTOM, orders are routed from member firms directly to the appropriate specialist on the trading floor. Of the public customer market and marketable limit orders routed through AUTOM, certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. These orders are automatically executed at the disseminated quotation price on the Exchange and reported back to the originating firm.⁷

The Exchange represents that AUTO-X affords prompt and efficient automatic executions at the disseminated quotation price on the Exchange. Therefore, the Exchange believes that increasing automatic execution levels should provide the benefits of automatic execution to a

larger number of customer orders. Further, the Exchange notes that this increase from 75 contracts to 100 contracts is consistent with similar Commission-approved increases to the automatic executions levels on other options exchanges.⁸

The Exchange notes that there are many safeguards incorporated into Exchange rules to ensure the appropriate handling of AUTO-X orders. For example, Phlx Rule 1080(f)(iii) states that the specialist is responsible for the remainder of an AUTOM order where a partial execution has occurred. Phlx Rule 1015 governs execution guarantees and requires the trading crowd to ensure that public orders are filled at the best market to a minimum of the disseminated size. In addition, Options Floor Procedure Advice F-7 provides that the size of any disseminated bid or offer shall be equal to the AUTO-X guarantee for the quoted options and shall be firm, except that the disseminated size of bids and offers of limit orders on the book shall be 10 contracts and shall be firm. Violations of any of these provisions could be referred to the Business Conduct Committee for disciplinary action.

The Wheel is a mechanism that allocates AUTO-X trades among specialists and Registered Options Traders ("ROT's").⁹ An ROT has discretion to participate on the Wheel to trade any option class to which he is assigned. An increase in the maximum AUTO-X order size does not prevent an ROT from declining to participate on the Wheel.¹⁰ Because the Wheel rotates in 2-lot to 10-lot increments depending upon the size of the order, no single ROT will be allocated the entire 100 contracts.

The Exchange also has procedures that permit a specialist to suspend AUTO-X in extraordinary circumstances.¹¹ AUTOM users are notified of such circumstances.

With respect to financial responsibility issues, the Exchange notes that it has a minimum net capital

⁸ The Exchange notes that the Commission has approved increases in the automatic execution levels from 75 contracts to 100 contracts on the American Stock Exchange, LLC ("Amex"); the Pacific Exchange, Inc. ("PCX"); and the Chicago Board Options Exchange, Inc. ("CBOE"). See Securities Exchange Act Release Nos. 43887 (January 25, 2001), 66 FR 8831 (February 2, 2001) (order jointly approving File Nos. SR-Amex-00-57 and SR-PCX-00-18); 44008 (February 27, 2001), 66 FR 13599 (March 6, 2001) (order approving File No. SR-CBOE-01-03).

⁹ Unlike ROTs, specialists are required to participate on the Wheel. See Phlx Rule 1080(g).

¹⁰ See Exchange Options Floor Procedure Advice F-24(e)(i).

¹¹ See Phlx Rule 1080(e) and Options Floor Procedure Advice A-13.

requirement respecting ROTs.¹² Furthermore, an ROT's clearing firm performs risk management functions to ensure that the ROT has sufficient financial resources to cover positions throughout the day. In this regard, the function includes real-time monitoring of positions. The Exchange believes that clearing firm procedures address the issue of whether an ROT has the financial capability to support trading of options orders as large as 100 contracts.

The Exchange believes that the increase in order size eligibility for AUTO-X orders should provide customers with quicker executions for a larger number of orders, 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 should not impose a significant burden on operation or capacity of the AUTOM System and will give the Exchange better means of competing with other options exchanges for order flow.

Additionally, the Exchange proposes to delete a section of Phlx Rule 1080(c) that states that orders for OTX options are eligible for AUTO-X execution for up to 100 contracts, in order to eliminate any potential for confusion over the permissible parameters applicable to AUTO-X eligible orders for both equity and index options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act¹³ in general, and furthers the objectives of section 6(b)(5) of the act¹⁴ 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, as well as to protect investors and the public interest by enhancing efficiency by providing automatic executions to a larger number of options orders.

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 that is not necessary in furtherance of the purposes of the Act.

¹² See Phlx Rule 703.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

⁶ *Id.*

⁷ See Phlx Rule 1080(c).

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 after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,¹⁵ the proposed rule change has become effective pursuant to section 19(b)(3)(A)¹⁶ of the Act and Rule 19b-4(f)(6)¹⁷ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does 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 in order to remain competitive with other exchanges with similar rules in effect.¹⁸

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately upon filing as of May 21, 2001, to allow the Phlx to compete with other options exchanges that currently have a maximum automatic execution eligibility limit of 100 contracts.¹⁹ 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,

¹⁵ As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ See *supra* note 8.

¹⁹ 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).

or otherwise in furtherance of the purposes of the Act.²⁰

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-2001-51 and should be submitted by July 9, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44405; File No. SR-Phlx-2001-08]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Other Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change of the Philadelphia Stock Exchange, Inc. Concerning the Maintenance, Retention, and Furnishing of Records and Other Information Related to Payment for Order Flow Arrangements

June 11, 2001.

On January 19, 2001, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (Act)¹ and Rule 19b-4 thereunder,² the Philadelphia

²⁰ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78(b)(3)(C).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Stock Exchange, Inc. (Phlx) filed with the Securities and Exchange Commission a proposed rule change to amend Phlx Rule 760 to require Phlx members and member organizations to make, keep current, and preserve records relating to payment for order flow arrangements and, upon request, to make those records available to the Phlx for inspection and review. The proposed change was published for comment in the **Federal Register** on April 2, 2001.³ The Commission received no comments on the proposal.

On May 22, 2001, the Phlx filed Amendment No. 1 to the proposed rule change, which replaced the original filing in its entirety. Amendment No. 1 added supplemental language to Phlx Rule 760 to clarify that the recordkeeping requirement apply only to Phlx specialists and specialist units that participate in the Phlx's payment for order flow program, and not to all Phlx members generally. The text of the proposed rule change is available at the principal offices of the Phlx and at the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended by Amendment No. 1, and is issuing this Order approving the proposed amended rule change.

Pursuant to Section 19(b)(2) of the Act,⁴ the Commission has determined to accelerate approval of the proposed rule change. The Commission notes that, prior to the filing of Amendment No. 1, the proposed rule change was noticed for public comment and did not attract any comments. Because Amendment No. 1 to the proposed rule change simply clarifies that the proposed recordkeeping requirements apply only to Phlx specialists and Phlx specialist units and not to Phlx members generally, the Commission finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice of this filing in the **Federal Register**. The Commission believes that the proposed rule change, as amended, will assist the Phlx to review and verify that its payment for order flow program is being administered pursuant to the terms that the Phlx has established.

The Commission finds that the proposed rule change, as amended by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, particularly Section 6 of the

³ Securities Exchange Act Release No. 44102 (March 26, 2001), 66 FR 17591 (April 2, 2001).

⁴ 15 U.S.C. 78s(b)(2).