to these requirements. Further, the proposed rule change clarified the use of SelectNet for order sent to, or orders sent by, UTP Exchanges that do participant in the automatic functionality of the NNMS. Finally, the Association proposed a definition for ''UTP Exchange'' are eliminated the definition and references to ''UTP Specialists''.

Summary of Comments

The Commission received one comment letter on the proposed rule changes from Archipelago.[10] This commenter objected to the differing treatment of ECNs and UTP Exchanges in the NNMS. Specifically, the commenter whether it was consistent with the Act for the Association to permit ECNs to participate in the NNMS as either a Full Participate ECN or an Order Entry ECN, while only permitting UTP Exchanges the option of participating fully in the automatic execution functionality of the NNMS; *i.e.,* UTP Exchanges that choose to participate in NNMS must both route orders for automatic execution in the NNMS as well as provide automatic execution for orders routed to their quotes.

The commenter also argued that as a securities information processor (''SIP''), Nasdaq should remain neutral with respect to all market centers and that Nasdaq therefore should not be able to treat UTP Exchanges differently than NASD members.

The Commission notes that the Archipelago Letter was submitted prior to the Commission's SuperMontage Order,[11] which specifically addressed Archipelago's concerns.[12] In that order, the Commission stated that the NASD did not have to make accommodations for competing exchanges that are comparable to accommodations provided to its members. The Commission further noted that it believed that NASD should be able to provide access to a competing exchange that is equivalent to the access the competing exchange provides for NASD members. In addition, the Commission also addressed Nasdaq's role as an exclusive SIP.[13] Specifically, in the SuperMontage Order, the Commission directed the NASD and the UTP Exchanges to re-evaluate the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan'').[14]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[15] and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposal is consistent with the requirements of sections 15A(b)(6)[16] of the Act because the proposed rule change is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in the 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, and, in general, to protect investors and the public interest.

The Commission believes that, by allowing UTP Exchanges to participate in the automatic-execution functionality of the NNMS, the proposed rule change will eliminate the potential for order queuing or for the system to stop processing orders when an UTP Exchange is alone at the best bid/best offer. The Commission notes that UTP Exchange participation in the auto-ex feature of NNMS is voluntary; these rules merely describe how a UTP Exchange that chooses to participate in the automatic execution function will need to operate.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The NASD plans to implement the NNMS system on July 9, 2001 and thus, accelerated approval is necessary to accommodate this timeframe. Since Amendment No. 1 clarifies the application of the proposed rule change, but did not change the intent of the proposal, the Commission believes that good cause exists, consistent with section 15A(b)(6)[17] and 19(b) of the Act[18] to accelerate approval of Amendment No. 1 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the amendment 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 NASD. All submissions should refer to File No. SR–NASD–00–30 and should be submitted by August 3, 2001.

VI. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change, as amended, (SR–NASD–00–30), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17522 Filed 7–12–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44527; File No. SR–Phlx–2001–19]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Institute an Antitrust Compliance Policy

July 9, 2001.

On March 5, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act

[10] *See* note 4 *supra.*

[11] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (''SuperMontage Order'').

[12] For the Commission's complete discussion, *see* SuperMontage Order, Section V.G.

[13] *See* SuperMontage Order, Section V.I.3.

[14] The Commission notes the UTP Plan participants are currently considering these issues.

[15] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78*o*–3(b)(6).

[17] 15 U.S.C. 78*o*–3(b)(5).

[18] 15 U.S.C. 78s(b).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, a proposal to institute an Antitrust Compliance Policy. On June 7, 2001, the Commission published the proposed rule change in the **Federal Register.**[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest.[5]

In September 2000, the Commission issued an order instituting public administrative proceedings against Phlx and other options exchanges, finding that Phlx and the other options exchanges had, among other things, followed a course of conduct that limited multiple listing of options, impeded competition in multiple listing, and failed appropriately to enforce rules relating to harassment and intimidation of members.[6] The Commission believes that Phlx's establishment of an Antitrust Compliance Policy should help to promote just and equitable principles of trade.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–2001–19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17517 Filed 7–12–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44373 (May 31, 2001), 66 FR 30783.

[4] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] *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, 2001).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44514; File No. SR–Phlx–2001–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to PACE Delivery of Certain Orders Without Agency Execution Guarantees

July 5, 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 15, 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 Phlx submitted Amendment No. 1 on June 14, 2001,[3] Amendment No. 2 on June 26, 2001,[4] and Amendment No. 3 on June 29, 2001.[5] 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 Phlx proposes to modify the order delivery aspect of PACE[6] to permit the specialist to choose to accept orders through PACE, without participating in the PACE execution guarantees for agency orders, where the entering member organization has elected not to receive automatic execution or primary market print protection for electronically delivered limit orders, in accordance with the procedures established by the Floor Procedure Committee. The text of the proposed rule change is below. Proposed new language is in italics.

* * * * *

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

PACE provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions. Orders accepted under the system may be executed on a fully automated or manual basis in accordance with the provisions of this Rule. Securities admitted to dealings on the equity floor are eligible for trading on the PACE System in which equity specialists and member organizations may choose to participate. The conditions under which orders will be accepted and executed are set forth below. When used in the Rule, PRL means a combined round-lot and odd-lot order, and PACE Quote means the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific or Philadelphia Stock Exchange, or the Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES'') quote, as appropriate. The PACE rules, conditions and guidelines do not apply to orders not on the system, and existing rules governing orders not on the system are not affected hereby.

Supplementary Material

The following PACE execution parameters are minimum standards applicable to agency orders received through PACE. Orders transmitted to the floor through the PACE system can be executed on a basis better than the applicable minimum standard:

.01 Member organizations wishing to participate in PACE may send to the Philadelphia trading floor market and limit orders up to the maximum number of shares in securities traded under PACE as shall be fixed by the Exchange from time to time. All orders in eligible securities shall be executed in whole or in part on a first in first out basis.

.02 Specialists are required to provide, at a minimum, PACE execution parameters, as defined by the Rule, to agency orders received through the system, *except as provided below.*

Although specialists are not required to provide PACE execution parameters to non-agency orders received through PACE, if the specialists choose to execute non-agency orders automatically through PACE, they must provide the same PACE executions to non-agency orders as they provide to agency orders. If however, the specialists choose to execute non-agency orders manually, the must adhere to existing Exchange rules governing orders not on the system with respect to such orders.

For purposes of the PACE System, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 11, 2001 (''Amendment No. 1''). In Amendment No. 1, the Phlx clarified the procedures required to permit the specialist to choose to accept orders through the Philadelphia Stock Exchange Automated Communications and Execution System (''PACE'') without participating in PACE execution guarantees for agency orders.

[4] *See* letter from Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 25, 2001 (''Amendment No. 2'').

[5] *See* letter from Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 27, 2001 (''Amendment No. 3''). Amendment No. 3 replaced Amendment No. 2 in its entirety and deleted the term ''generally'' from the proposed rule text.

[6] PACE is the Exchange's electronic order routing, delivery, execution and reporting system. *See* Phlx Rule 229.