

securities on which the Exchange will list options.⁷ The Exchange believes its own business considerations should ensure that the Exchange does not list inappropriate classes of options. In determining to list any number of new option series under the proposed less restrictive standard, the Exchange represents that it must ensure that its own systems and those of Options Price Reporting Authority can handle any increased capacity requirements.

The Exchange represents that another reason for the proposal is that the current rule can be subject to differing interpretations. The Exchange notes that the options exchanges believe differing interpretations have occurred. The Exchange believes that the proposal is more clear because it reduces the standards to only one price guideline and checks that guideline the previous day or intra-day, instead of over the previous six months.

2. Statutory Basis

The Exchange believes that the current proposal should allow the Exchange to provide investors with those options that are most useful and demanded by them without sacrificing investor protection. As such, the Exchange believes the proposed rule change, as amended, is consistent with section 6 of the Act,⁸ in general, and with section 6(b)(5) of the Act,⁹ in particular, because it should promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

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 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 solicited or received.

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

Because the foregoing proposed rule change, as amended: (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; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with the brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change,¹⁰ or such shorter time as designated by the Commission, the proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² 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, as amended, become operative immediately. The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, operative as of November 20, 2001.¹³ The Commission notes that the proposed rule change, as amended, is substantially similar in all material respects to the rule of another exchange that the Commission has already noticed for public comment and approved¹⁴ and, therefore, the proposed rule change raises no new issues of regulatory concern.

At any time within 60 days of the filing of the proposed rule change, as amended, 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.¹⁵

¹⁰ See *supra* note 3.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

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 See Securities Exchange Act Release No. 44964 (October 19, 2001), 66 FR 54559 (October 29, 2001) (order approving File No. SR-CBOE-2001-29).

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

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 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-2001-96 and should be submitted by December 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45090; file No. SR-Phlx-2001-100

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. To Extend Its Pilot Program To Disengage Its Automatic Execution System ("AUTO-X") for a Period of Thirty Seconds After the Number of Contracts Automatically Executed in a Given Option Meets the AUTO-X Minimum Guarantee for That Option

November 21, 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 October 30, 2001, the Philadelphia Stock

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁷ Of course, the rule still provides that the security underlying the option must be listed on a national securities exchange or Nasdaq.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On November 8, 2001, the Phlx filed Amendment No. 1 to the proposed rule change.³ On November 19, 2001, the Phlx filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal, as amended, on an accelerated basis, for an additional six-month pilot, expiring on May 31, 2002.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend, for an additional six months, its pilot program effecting a systems change to AUTO-X, the automatic execution feature of the Exchange's Automated Options Market System ("AUTOM"),⁵ that would disengage AUTO-X for a period of thirty seconds after the number of contracts automatically executed in a given option meets the AUTO-X minimum guarantee for that option. The pilot program was originally approved on a six-month basis for a limited number of eligible options,⁶ and subsequently extended for an additional six-month

³ See Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 7, 2001 ("Amendment No. 1"). In Amendment No. 1, the Phlx amended its proposal by deleting a paragraph inadvertently placed in its original filing. The Phlx also clarified that it was taking steps to address the possibility of re-engaging AUTO-X prior to thirty seconds if the specialist revises its quote before thirty seconds.

⁴ See Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated November 16, 2001 ("Amendment No. 2"). In Amendment No. 2, the Phlx confirmed that it has completed all actions required to be taken under its by-laws and rules. The Phlx's Executive Committee, pursuant to delegated authority, approved the proposed rule change for filing with the Commission on November 13, 2001.

⁵ 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 certain orders are eligible for AUTOM's automatic execution feature, 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's trading floor.

⁶ See Securities Exchange Act Release No. 43652 (December 1, 2000), 65 FR 77059 (December 8, 2000) (SR-Phlx-00-96) ("Initial Pilot Program").

period.⁷ Recently, the number of options eligible for the pilot was expanded to include all Phlx-traded options.⁸ The current pilot is scheduled to expire on November 30, 2001.

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 III 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

The Phlx proposes to extend the pilot program for an additional six-month period. On December 1, 2000, the Initial Pilot Program became effective.⁹ The pilot program was then extended for an additional six months and is currently scheduled to end on November 30, 2001.¹⁰ The pilot program includes the following features:

- Once an automatic execution occurs in an option via AUTO-X, the system would begin a "counting" program, which would count the number of contracts executed automatically for that option, up to the AUTO-X guarantee, regardless of the number of executions.

- When the number of contracts executed automatically for that option meets the AUTO-X guarantee within a fifteen second time frame, the system would cease to automatically execute for that option, and would drop all AUTO-X eligible orders in that option for manual handling by the specialist for a period of thirty seconds to enable the specialist to refresh quotes in that option.¹¹

⁷ See Securities Exchange Act Release No. 44362 (May 29, 2001), 66 FR 30037 (June 4, 2001) (SR-Phlx-2001-56).

⁸ See Securities Exchange Act Release No. 44760 (August 31, 2001), 66 FR 47253 (September 11, 2001) (SR-Phlx-2001-79).

⁹ See *supra* note 6.

¹⁰ See *supra* note 7.

¹¹ Any orders delivered in excess of the minimum AUTO-X guarantee will be executed to the guaranteed amount and the excess will be dropped to the specialist for manual execution. See Initial Pilot Program, *supra* note 6.

- Upon the expiration of thirty seconds, automatic executions would resume and the "counting" program would be set to zero and begin counting the number of contracts executed automatically within a fifteen second time frame again, up to the AUTO-X guarantee.

- Again, when the number of contracts automatically executed meets the AUTO-X guarantee within a fifteen second time frame, the system would drop all subsequent AUTO-X eligible orders for manual handling by the specialist for a period of thirty seconds.

A significant purpose of this pilot program is to enable the Exchange to move towards the dissemination of options quotations with size.¹² The "counting" feature of the pilot program functions to disengage AUTO-X for a period of thirty seconds in a given option once the number of contracts automatically executed meets the AUTO-X guarantee for that option within a fifteen-second time frame. A similar "counting" mechanism is expected to be utilized upon the implementation of the systems necessary for the dissemination of options quotations with size. Thus, the proposed extension of the pilot program should allow the Exchange to continue its efforts in the process of moving towards the implementation of quotations with size.

The Exchange believes that an extension of the pilot program would enable specialists to continue to provide fair and orderly markets during peak market activity by manually executing orders at correct market prices and refreshing quotations to reflect market demand.

In addition, the Exchange recognizes that the Commission has inquired into the possibility of re-engaging AUTO-X in less than thirty seconds once the specialist revises the quote. The Exchange's Financial Automation, Legal, and Regulatory staff have begun to review the issue, specifically as to whether it is feasible to re-engage AUTO-X for an entire issue based upon

¹² Currently, the size of any disseminated bid or offer by the Exchange is equal to the AUTO-X guarantee for the quoted option, except that the disseminated size of bids and offers of limit orders on the book is ten contracts and is firm regardless of the actual size of such orders. See Exchange Options Floor Procedure Advice F-7. The Exchange has established this rule setting forth the size for which its quotes are firm, and periodically publishes that size in accordance with recently amended Rule 11Ac1-1 under the Act (the "Quote Rule"). See Securities Exchange Act Release No. 44145 (April 2, 2001), 66 FR 18662 (April 10, 2001) (SR-Phlx-01-37). The pilot program is designed, in part, to enable the Exchange to roll out the system designed to decrement the disseminated size of Exchange quotes once such system is deployed.

the revision of a quotation in one single series.¹³

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act¹⁴ in general, and with Section 6(b)(5) in particular,¹⁵ in that it is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade by enabling Exchange specialists to maintain fair and orderly markets during periods of peak market activity.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive or solicit any written comments on the proposed rule change.

III. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No.

¹³ Under Phlx's current pilot program, AUTO-X is programmed to re-engage after thirty seconds regardless of whether the specialist has updated its quote prior to that period of time. Division staff have informed the Phlx that it would not grant the pilot program permanent approval unless the Phlx addresses this issue.

¹⁴ 25 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(5).

SR-Phlx-2001-100 and should be submitted by December 21, 2001.

IV. Commission's Finding and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁶ In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest.¹⁷ The Commission believes that an extension of the pilot program for an additional six months should help the Exchange to prepare for disseminating options quotes with size. In addition, the Commission believes that the proposal may assist specialists in maintaining fair and orderly markets during periods of peak market activity.

The Commission recognizes that during the last six-month extension of the pilot program, the Phlx has received no complaints from customers, floor traders, or member firms. The Exchange noted that Phlx Rule 1080(c) provides the Phlx's Options Committee discretion to restrict the use of AUTO-X in any options series. The Exchange also clarified that orders would not be executed at an inferior price simply because they are routed to the specialist for manual handling; the orders would be handled in a manner consistent with the Exchange's rules on priority, parity, and precedence and in compliance with SEC's Quote Rule and Phlx Rule 1082 ("Firm quotations"). In addition, the Commission notes that the Exchange is attempting to address its concern regarding the feasibility of re-engaging AUTO-X for a particular issue prior to thirty seconds if the quote has been revised by the specialist before that time period.¹⁸ Consequently, the Commission believes that extending the pilot program for an additional six months should enable the Phlx to further evaluate the effect of disengaging AUTO-X under certain circumstances.

The Commission notes that the Exchange has represented that it will continue to evaluate the pilot program

¹⁶ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ See *supra* note 13.

by reviewing specialists' performance, and by monitoring any complaints relating to the pilot program.¹⁹ Furthermore, the Commission notes that the Exchange has represented that it will continue to post on its website a list of options included in the pilot program, as well as issue a circular to this effect to members, member organizations, participants, and participant organizations explaining the pilot program and the circumstances in which the AUTO-X system will not be available for customer orders.²⁰

Finally, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,²¹ for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof the **Federal Register**. The Commission believes that granting accelerated approval to extend the pilot program for an additional six months will allow Phlx to continue, without interruption, the existing operation of its AUTO-X system.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-Phlx-2001-100), as amended, is hereby approved on an accelerated basis, as a six-month pilot, scheduled to expire on May 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-29718 Filed 11-29-01; 8:45 am]

BILLING CODE 8010-01-M

TRADE AND DEVELOPMENT AGENCY

SES Performance Review Board

AGENCY: Trade and Development Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the Trade and Development Agency's Performance Review Board.

¹⁹ Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Sapna C. Patel, Attorney, Division, Commission, on November 16, 2001.

²⁰ *Id.* Phlx also represented that it would include language in its circular clarifying that AURO-X will not be re-engaged until the expiration of the thirty second period, even after a quote is revised. Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Sapna C. Patel, Attorney, Division, Commission, on November 16, 2001.

²¹ 15 U.S.C. 78s(b)(2).

²² *Id.*

²³ 17 CFR 200.30-3(a)(12).