

Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> Specifically, the Commission finds that the proposal to clearly establish that PXC inactive lessors are eligible to serve on the PCX Board is consistent with Section 6(b)(5) of the Act,<sup>5</sup> because it is designed to promote just and equitable principals of trade and to protect investors and the public interest. Inactive lessors have a financial interest in the activities of the Board and the Exchange due to their ownership of an Exchange membership. The Commission finds that allowing inactive lessors to serve on the Board is a fair and reasonable practice to provide inactive lessors and their interests to be represented on the Board.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-PCX-2001-45) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45295; File No. SR-Phlx-2002-03]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend a PACE Order Execution and Price Protection Pilot Program

January 16, 2002.

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 January 8, 2002, 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 Exchange. The Exchange filed this proposal under section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule

19b-4(f)(6)<sup>4</sup> thereunder, which renders the proposal 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 Exchange proposes to extend through April 15, 2002 its PACE (Philadelphia Stock Exchange Automated Communication and Execution System)<sup>5</sup> order execution and price protection pilot program (“pilot”). The pilot, which is found in Supplementary Material .05 and .07(c)(ii) to Phlx Rule 229, incorporates decimal pricing into two PACE provisions—immediate execution of certain market orders through the Public Order Exposure System (“POES”) and mandatory double-up/double-down price protection for equities trading in decimals. The pilot has been in effect since August 25, 2000.<sup>6</sup> The only substantive change proposed in this filing is to extend the date of effectiveness of the pilot through April 15, 2002. The text of the proposed rule change is available at the Phlx and at the Commission.

#### 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

<sup>4</sup> 17 CFR 240.19b-4(f)(6). The Phlx requested that the Commission waive the 5-day pre-filing notice requirement, and the 30-day operative delay.

<sup>5</sup> PACE is the Phlx’s automated order routing, delivery, execution and reporting system for equities.

<sup>6</sup> The pilot was established in SR-Phlx-00-08. See Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000). The pilot has been extended several times, most recently through January 14, 2002. See Securities Exchange Act Release Nos. 44185 (April 16, 2001), 66 FR 20511 (April 23, 2001)(SR-Phlx-2001-20); 44818 (September 19, 2001), 66 FR 49240 (September 26, 2001)(SR-Phlx-2001-81); and 45079 (November 19, 2001), 66 FR 59292 (November 27, 2001)(SR-Phlx-2001-102). The price improvement portion of the pilot program (Supplementary Material .07(c)(i) to Rule 229) has been replaced by a price improvement pilot program with an automatic price improvement feature based on decimal trading, including a percentage of the spread between the bid and the offer. See Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001)(SR-Phlx-2001-12).

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 Exchange proposes to extend the pilot through April 15, 2002. No other substantive changes are proposed at this time.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act<sup>7</sup> in general, and in particular, with section 6(b)(5),<sup>8</sup> in that it is 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 market system, and, in general, 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 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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days

from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> 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.

The Exchange has requested that the Commission waive the 5-day pre-filing

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> 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).

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

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>8</sup> 15 U.S.C. 78s(b)(1).

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

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

notice requirement, and accelerate the operative date. The Commission finds good cause to waive the pre-filing notice requirement, and to designate the proposal to be both effective and operative upon filing because such designation is consistent with the protection of investors and the public interest. Waiver of these requirements will allow the pilot to continue uninterrupted through April 15, 2002. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.<sup>11</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 Exchange. All submissions should refer to the file number SR-Phlx-2002-03, and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45288; File No. SR-Phlx-2001-107]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Extension of the Interim Intermarket Linkage Program

January 16, 2002.

On November 29, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change seeking to extend the pilot program authorizing implementation of "interim linkages" with the other options exchanges until April 1, 2002.<sup>3</sup>

The proposed rule change was published for comment in the **Federal Register** on December 12, 2001.<sup>4</sup> The Commission received no comments on the proposal.

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<sup>5</sup> and, in particular, the requirements of section 6 of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change should enable investors effecting transactions on the Phlx to obtain better prices displayed on the other exchanges and therefore is consistent with the objects of section 6(b)(5) under the Act<sup>7</sup> which requires that exchange rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the

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

<sup>2</sup> 17 CFR 240-19b-4.

<sup>3</sup> On May 16, 2001, the Commission issued a notice of filing and immediate effectiveness of a pilot program submitted by the Phlx authorizing the implementation of an interim linkage. *See* Securities Exchange Act Release No. 44311, 66 FR 28768 (May 24, 2001).

<sup>4</sup> *See* Securities Exchange Act Release No. 45132 (December 5, 2001), 66 FR 64330.

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f.

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

<sup>8</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-PHLX-2001-107) be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45289; File No. SR-Phlx-2001-117]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Increase to the Exchange Technology Fee

January 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 20, 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 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 Exchange proposes to amend its schedule of dues, fees, and charges to increase its technology fee applicable to all members and foreign currency options participants not also holding legal title to a Phlx membership from the current charge of \$100.00 per month to \$150.00 per month. The text of the proposed rule change is available at the principal offices of the Phlx and at the Commission.

#### 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 the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of

<sup>9</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>11</sup> 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).

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