

requirements of sections 6(b)(7) and 6(d)(1) of the Act.¹⁴

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

The Exchange does not believe that the proposed rule change will result in 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act¹⁵ and Rule 19b-4(f)(6)¹⁶ thereunder because the 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 the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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 Commission finds that it is appropriate to accelerate the operative date of the proposed rule change and to permit the proposed rule change to become immediately operative because the proposal simply extends a previously approved pilot program until December 22, 2002.¹⁷ No changes to NYSE Direct+ are being proposed at this time and the Commission has not received any comments on the pilot program. In addition, the Exchange appropriately filed a pre-filing notice as required by Rule 19b-4(f)(6).¹⁸

¹⁴ 15 U.S.C. 78f(b)(6) and 78f(d)(1).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ The Commission confirms that the Rule 10a-1 Exemption Letter remains in effect for the duration of the pilot.

¹⁸ 17 CFR 240.19b-4(f)(6). For purpose 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).

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 Exchange. All submissions should refer to File No. SR-NYSE-2001-50 and should be submitted by February 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-2487 Filed 1-31-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45343; File No. SR-Phlx-2001-120]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. to Amend Phlx Rule 237, "The eVWAP Morning Session"

January 28, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on December 26, 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 Exchange. On January 25, 2002, the Phlx amended

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the proposal.³ 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 Exchange proposes to amend Phlx Rule 237, "The eVWAP Morning Session," to: (1) Allow Exchange-Traded Fund Shares⁴ to be executed on the eVWAP System ("System");⁵ (2) codify order increment size requirements; and (3) make minor technical amendments to Phlx Rule 237.

Background

The System is a daily, pre-opening order matching session for the execution of large-sized stock orders at the volume weighted average price ("VWAP"). The matched and executed orders are assigned a VWAP after the close of regular trading. The System operates as a facility of the Phlx under Section 3(a)(2) of the Act and is governed by Phlx Rule 237.⁶

Currently, the securities eligible for execution in the System pursuant to Phlx Rule 237(b) are exchange listed component issues of the Standard & Poor's 500 index and any exchange listed issue that has been designated by the compiler of the index for inclusion in such index and any of 300 New York Stock Exchange ("NYSE") issues selected according to a prescribed selection process.⁷

Pursuant to Phlx Rule 237, access to the System is limited to "Committers,"⁸ who enter "commitments" and "Users,"

³ See January 24, 2002 letter from Cynthia K. Hoekstra, Counsel, Phlx, to Joseph P. Morra, Special Counsel, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the Phlx made minor, technical changes to the proposed rule language.

⁴ Exchange-Traded Fund Shares include exchange listed securities representing interests in open-end unit investment trusts or open-end management investment companies that hold securities based on an index or a portfolio of securities. See Phlx Rule 1000(b)(42).

⁵ The System was developed by Universal Trading Technologies Corporation, Inc. ("UTTC"). UTTC is a subsidiary of the Ashton Technology Group, Inc.

⁶ See Securities Exchange Act Release No. 41210 (March 24, 1999), 64 FR 15857 (April 1, 1999) (SR-Phlx-96-14).

⁷ The 300 NYSE issues are selected as follows: The top 400 NYSE issues with the highest market capitalization excluding the 100 issues that have the lowest average daily dollar trading volume over 20 days preceding the eligibility determination. Eligibility is determined at least semi-annually. See Phlx Rule 237(b).

⁸ "Committers" are Exchange members that are: (i) Phlx Floor traders (i.e., a Phlx Specialist or Phlx Alternate Specialist in the eligible stock that is the subject of the Commitment); or (ii) Phlx Off-Floor Liquidity Providers (members that commit to provide contra-side liquidity). See Phlx Rule 237(d).

who enter "orders." A "User" is defined as an Exchange member or non-member who enters orders through the System. Users may enter three types of orders: (i) Basic; (ii) cross; and (iii) facilitation. A basic order is a standard, one-sided order to buy or sell. A basic order may be restricted, meaning it is executable against non-members only. A cross order is a two-sided order, with both sides comprised of non-member interest, with instructions to match the identified buy-side with the identified sell-side. The two sides making up a cross can be entered separately, with the contra-side identified.

A facilitation order is a two-sided order, with an identified Phlx member on the contra-side to act as a facilitator for that order (such member is known as a "Guarantor"). The contra-side may be entered together with, or separate from, the facilitation order. Facilitation orders can be submitted on behalf of Phlx members or non-members. Unlike basic orders, facilitation orders may not be restricted. One of the three types of facilitation orders that are available to Users is an unconditional facilitation order, which is to be executed against an identified Guarantor or not at all.⁹ This order is a type of cross involving a Phlx member Guarantor.

Proposal

The Exchange proposes to amend Phlx Rule 237 to allow ETFs to be eligible for eVWAP trading.¹⁰ In addition, the Exchange proposes to codify two amendments to Phlx Rule 237 allowing: (1) All basic orders and commitments to be entered in 100 share increments, with the minimum order size remaining at 5,000 shares and the minimum commitment size remaining at 2,500 shares; and (2) cross orders, including unconditional facilitation orders, to be excepted from the 5,000 minimum order size requirements and to be executed in 100 share increments, with a minimum order size of 100 shares.¹¹

⁹ The other two types of facilitation orders that are available to Users are (i) conditional facilitation orders: Execute against an identified Guarantor after attempting to be executed against non-members to the extent possible; and (ii) last resort facilitation: Execute against an identified Guarantor only after attempting to execute against all other orders and commitments to the extent possible.

¹⁰ The ETF trades executed through eVWAP will be reported pursuant to the applicable reporting channel, the Consolidated Tape Association. Initially, the Exchange intends to include one ETF, which is currently traded on the Exchange's equity floor, to the System. Other ETFs may be listed pursuant to unlisted trading privileges ("UTP") even if not traded on the Phlx equity floor during regular trading hours.

¹¹ These modifications were approved by the Exchange's Floor Procedure Committee on March

Also, the Exchange proposes to make minor technical amendments to change the reference to stock to security in order to accurately reflect the addition of ETFs and to replace a reference to UTS with eVWAP.¹²

The text of the proposed rule change is below. Additions are in italics; deletions are in brackets.

Rule 237. The eVWAP Morning Session

(a) No change.

(b) Eligible Securities. The following securities will be eligible for execution in the System:

(i) Exchange listed component issues of the Standard & Poor's 500 index and any exchange listed issue that has been designated by the compiler of such index for inclusion in such index.

(ii) Any of 300 New York Stock Exchange (NYSE) issues selected as follows: the 400 NYSE issues with the highest market capitalization excluding the 100 issues that have the lowest average daily dollar trading volume over 20 days preceding the eligibility determination, with eligibility determined at least semi-annually.

(iii) *Any Exchange-Traded Fund/ Shares that are eligible for trading on the Exchange.*

(c)-(d) No change.

(e) Order Entry. eVWAP orders will only be accepted during the eVWAP Order Entry Time Period from 5:00 a.m. to 9:15 a.m. except the Exchange may establish a different period respecting the eVWAP [UTS] trading floor terminal. Morning Session orders will only be eligible for execution on the day the order is placed and only through the eVWAP System. The minimum order size is 5,000 shares *except for unconditional facilitation and cross orders, for which the minimum order size is 100 shares.* The minimum commitment size is 2,500 shares. All orders and commitments must be in 100 [500] share increments including any "AON" or "MON" designations, as defined below. The Exchange may determine whether different sizes should be established.

(e)(i) No change.

(e)(ii)(c) *security* [stock] symbol;

22, 2001 (cross orders) and July 17, 2001 (minimum order and commitment size). These modifications were based on market and participant need and did not require prior Commission approval. See Securities Exchange Act Release No. 41210 (March 24, 1999), 64 FR 15857 (April 1, 1999) (SR-Phlx-96-14).

¹² Previously, references to UTS were eliminated and replaced by eVWAP. However, one reference to UTS was not changed. See Securities Exchange Act Release Nos. 42702 (April 19, 2000), 65 FR 24528 (April 26, 2000) (SR-Phlx-2000-19) and 44230 (April 19, 2001), 66 FR 21427 (April 30, 2001) (SR-Phlx-2001-10).

(f)-(j) No change.

(k) Trading Halts. Nothing in this Rule shall be construed to limit the ability for the Exchange to otherwise halt or suspend trading in any *security* [stock] traded through the eVWAP System.

(l)-(m) No change.

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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 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 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 amend Phlx Rule 237 to address needs identified to the system operator, namely the addition of ETFs and the codification of certain order increment sizes, in order to attract new business to eVWAP.

The Exchange proposes to allow ETFs to be traded on the System. ETFs are becoming an alternative product to trading the actual securities comprising an index or fund. A number of eVWAP participants have requested that the Phlx make ETFs eligible for inclusion in the system pursuant to Phlx Rule 237 issue eligibility procedures. The Phlx believes that allowing ETFs to be traded through the eVWAP System should help to meet the demands of these institutional traders and other market participants that desire volume weighted average price-based transactions on ETFs. Moreover, the Phlx believes that adding ETFs to the System should increase eVWAP order flow and provide additional trading alternatives to market participants.

The Phlx proposes to codify two changes to Phlx Rule 237 regarding order and commitment size. The Exchange sought to promote additional trading through the System by allowing: (1) all basic orders and commitments to be entered in 100 share increments, with the minimum order size remaining at 5,000 shares and the minimum commitment size remaining at 2,500 shares; and (2) cross orders, including unconditional facilitation orders, to be

excepted from the 5,000 minimum order size requirements and to be executed in 100 share increments, with a minimum order size of 100 shares. The Phlx believes these changes in order and commitment size should encourage trading through the System by eliminating previously imposed order and commitment size restrictions. This aspect of the proposal is intended to codify expressly into the rule a previously implemented modification.¹³ The Exchange believes that reflecting the size into the rule should make it more apparent to potential participants that smaller sizes are permissible, thereby potentially attracting new business.

The proposed rule change also makes minor technical amendments to Phlx Rule 237 to change the reference from stock to security to more accurately reflect the addition of ETFs and to replace a reference to UTS with eVWAP.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act¹⁴ in general, and in particular, with Section 6(b)(5),¹⁵ in that it is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system by expanding the number of securities eligible for eVWAP trading and to codify order and commitment size requirements to promote trading activity.

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

The Phlx does not believe that the proposed rule change would 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 either solicited or 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 Exchange 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 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 filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2001-120 and should be submitted by February 22, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-2490 Filed 1-31-02; 8:45 am]

BILLING CODE 8010-01-P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Notice of Office of Management and Budget (OMB) Approval, Proposed Request and Comment Request

ACTION: Notice of OMB Approval

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Social Security Administration (SSA) is providing notice of OMB's approval of the information collections in the final rule, Revised Medical Criteria for Determination of Disability, Musculoskeletal System and Related Criteria, part 404, subpart, appendix 1. In accordance with the Paperwork

Reduction Act, persons are not required to respond to an information collection unless it displays a valid Office of Management and Budget control number. The OMB Number is 0960-0642, which expires December 31, 2004.

ACTION: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer and at the following addresses: (OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503. (SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1-A-21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410-965-0454, or by writing to the address listed above.

1. Employee Work Activity Report—0960-0483. The data collected by the Social Security Administration on Form SSA-3033 is reviewed and evaluated to determine if the claimant meets the disability requirements of the law, when the claimant returns to work after the alleged or established onset date of disability. When a possible unsuccessful work attempt or nonspecific subsidy is involved (and the information cannot be obtained through telephone contact), Form SSA-3033 will be used to request a description, by mail, of the employee's work effort. The respondents are employers of Old Age, Survivors and Disability Insurance and Supplemental

¹³ See footnote 10, supra.

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 17 CFR 200.30-3(a)(12).