

rule change relating to option orders that are created and communicated to the Exchange electronically, without manual input ("computer generated orders").<sup>4</sup> Under that proposed rule change, computer generated orders are not eligible for automatic execution via the Exchange's Auto-Ex System. To prevent computer generated orders from being processed through Auto-Ex, Member Firms sending computer generated orders electronically to the Exchange are required to designate them with a "CG" in the "additional instruction" field of the Common Message Switch ("CMS")<sup>5</sup> record layout. Orders so designated are re-routed for representation by a Floor Broker. The Exchange represents that due to changes in technology specifications, the indicator "CG" orders must now be designated on line 3C, field 1, of the CMS record layout. The Exchange represents that Orders so designated will be re-routed for representation by a Floor Broker.

The proposed rule change, as amended, requires member firms to identify CG orders "in a form and manner as prescribed by the Exchange." The PCX represents that this will provide it with flexibility to change the requirements for identifying CG orders with technological advances.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade.

### *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 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, as amended, were neither solicited nor received.

<sup>4</sup> See Securities Exchange Act Release No. 43328 (September 22, 2000), 65 FR 58834 (October 2, 2000) (SR-PCX-00-13).

<sup>5</sup> The CMS is the options order format generally followed by all options exchanges.

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

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

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

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(5) of Securities Exchange Act Rule 19b-4<sup>9</sup> thereunder because it effects a change in an existing order-entry or trading system of a self-regulatory organization that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. At any time within 60 days after January 25, 2002, 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.<sup>10</sup>

## 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, as amended, 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 PCX. All submissions should refer to File No. SR-PCX-2002-02 and should be submitted by March 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(5).

<sup>10</sup> See 15 U.S.C. 78(b)(3)(C).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45388; File No. SR-Phlx-2001-121]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending its Fee Schedule for the Use of the Intermarket Trading System**

February 4, 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 December 31, 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 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 revise its fee schedule by establishing a fee charged to equity specialists. According to the Exchange, the proposed fees are based on the use of the Intermarket Trading System ("ITS") to execute certain sized customer orders received over the Philadelphia Stock Exchange Automated Communication and Execution ("PACE")<sup>3</sup> system, and sent outbound over ITS with the customer's clearing information. The Exchange also proposes to create a credit to equity specialists for net inbound shares executed over ITS.

### **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. 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 the most significant aspects of such statements.

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

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

<sup>3</sup> PACE is the electronic order routing, delivery, execution and reporting system used to access the Phlx Equity Floor.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The purpose of the proposed rule change is to establish a fee charged to Exchange equity specialists for their use of ITS to execute certain sized customer orders received over the PACE system, and create a credit given to equity specialists for net inbound shares executed over ITS. The Exchange proposes to charge equity specialists \$0.60 per 100 shares on customer orders received over the PACE system of 500 shares or less that the equity specialist sends away as an ITS commitment marked with the customer's clearing information, to the extent that the order is executed over ITS. Additionally, the Exchange proposes to charge equity specialists \$0.30 per 100 shares on customer orders received over the PACE system of 501 to 4,999 shares that the equity specialist sends away as an ITS commitment marked with the customer's clearing information, to the extent that the order is executed over ITS.<sup>4</sup> The Exchange designates this fee as eligible for the Monthly Member Credit.<sup>5</sup>

The Exchange also proposes that equity specialists receive a credit of \$0.30 per 100 shares on the excess, if any, of the number of inbound ITS shares executed by the equity specialist over the number of outbound ITS shares sent by the equity specialist and executed away in the same calendar month.<sup>6</sup> The Exchange proposes to begin charging this fee and applying this credit on trades settling on January 2, 2002. The Exchange proposes to begin chargining this fee and applying this

<sup>4</sup> The Exchange represents that equity specialists will not be charged a fee on customer orders received over the PACE system of 5,000 or greater shares that the equity specialist chooses not to execute on the Exchange, but to send and execute away an ITS commitment marked with the customer's clearing information. Additionally, equity specialists will not be charged a fee on non-PACE customer orders of any size that the equity specialist sends and executes away through ITS. Finally, the basis for the fee will be on the number of shares executed away over ITS, not on the size of the original customer order.

<sup>5</sup> See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (approving SR-Phlx-2001-49). The Monthly Member Credit allows Exchange members to receive a monthly credit of up to \$1,000 to be applied against fees, dues, charges and other such amounts.

<sup>6</sup> The Exchange represents that no credit will be applied if the number of the inbound ITS shares executed by the equity specialist is equal to or less than the number of outbound ITS shares sent by the equity specialist and executed away.

credit on trades settling on February 1, 2002.<sup>7</sup>

According to the Exchange, equity specialists receiving customer orders over the PACE system may, among other things, choose to execute the order pursuant to Phlx Rule 229, or send an outbound ITS commitment marked with the customer's clearing information for execution at another exchange, pursuant to Phlx Rule 2000, *et seq.* The Exchange represents that members sending customer orders would pay no PACE fees when they route orders to the Exchange through PACE, however, they would incur fees when the specialist chooses to send away an ITS commitment marked with the customer's clearing information.

The Exchange believes that the proposed fee schedule should create an incentive for equity specialists to either execute customer orders under 5,000 shares received over the PACE system and not send an outbound ITS commitment marked with the customer's clearing information for execution at another exchange, or send the order as an outbound ITS commitment marked with the equity specialist's clearing information.<sup>8</sup> According to the Exchange, when equity specialists send outbound ITS commitments with their own clearing information, customers will not be charged a PACE fee.<sup>9</sup> Therefore, the Exchange believes that customers will benefit from a reduced number of orders sent via ITS marked with the customer's clearing information.

The Exchange also believes that the proposed credit to equity specialists for net inbound shares executed over ITS should encourage equity specialists to act as net "liquidity providers" (by executing more inbound ITS shares than they send away for execution), rather than acting as net "liquidity takers."

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general,<sup>10</sup> and

<sup>7</sup> February 1, 2002 telephone conversation between Edith Hallahan, Phlx, and Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission.

<sup>8</sup> The Exchange notes that equity specialists who send and execute away an ITS commitment marked with the equity specialist's clearing information, as opposed to the customer's clearing information, will not be charged the proposed fee.

<sup>9</sup> The Phlx represents that this reference to a PACE fee is an existing fee that is not impacted or altered by this proposed rule change. February 1, 2002 telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Katherine England, Assistant Director, Division, Commission.

<sup>10</sup> 15 U.S.C. 78f.

Sections 6(b)(4)<sup>11</sup> and 6(b)(5)<sup>12</sup> of the Act in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities; and it promotes just and equitable principles of trade, and protects investors and the public interest.

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

The Exchange believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in the 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**

Because the foregoing proposed rule change establishes or changes a due, fee or charge imposed by the Phlx, it has become effective upon filing pursuant to Rule 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(2) thereunder.<sup>14</sup> At any time within 60 days of the filing of such 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.

**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

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

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-2001-121 and should be submitted by March 4, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45390; File No. SR-Phlx-2001-108]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Increase of the Minimum Size of PACE Orders That Must Be Automatically Guaranteed by Equity Specialists

February 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 196-4 thereunder,<sup>2</sup> notice is hereby given that on December 5, 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. On January 31, 2002, the Phlx amended its proposal.<sup>3</sup> 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 amend its rules to restore the minimum automatic execution size of PACE<sup>4</sup> orders for

equity specialists from 299 shares to 599 shares. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and 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 Phlx included statements concerning the purpose of, and basis for, 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 purpose of the proposed rule change is to restore the equity specialists' minimum automatic execution size for PACE orders to 599 shares. In a recent proposed rule change, the Exchange amended Phlx Rule 229 to reduce the minimum automatic execution size of PACE orders from 599 shares to 299 shares.<sup>5</sup> The Exchange never implemented that reduction.<sup>6</sup>

According to the Exchange, the June 2001 rule change addressed a concern commonly raised by liquidity providers in a post-decimal trading environment that the transition to trading in decimal increments, rather than in fractions, has resulted in a wider range of quoted prices (more ticks), as well as an increase in small-sized bids and offers made at a particular price. The Exchange also represented in the June 2001 rule change that such bids and offers, which can be for as little as 100 shares qualify, regardless of their size, to become the National Best Bid or Offer ("NBBO"), also known for PACE purposes as the "PACE Quote."

At this time, the Exchange proposes to restore the rule language providing for a minimum automatic execution size of

599 shares in order to preserve the current levels of automatic execution on the Exchange's equity floor. It is the Exchange's belief that the present market environment and focus on speed of execution require that automatic execution levels remain at least at 599 shares.

The Exchange believes that returning to a 599 share minimum automatic execution level, should result in more orders eligible for automatic execution. Because the 599 shares level is a minimum, specialists may set their automatic execution levels higher than 599 shares. Where the specialist has set an automatic execution level that is higher, such as 1,099 shares, orders greater than that automatic execution level are handled manually by the specialist (although they can be delivered electronically to the specialist by PACE). Obviously, orders less than 1,099 shares, in this example, would be eligible for automatic execution.

Similarly, where the specialist has set an automatic execution level of the minimum 599 shares, orders for 599 shares or less are eligible for automatic execution and orders for more than 599 shares are handled manually by the specialist. In short, the proposal re-establishes 500 shares as the minimum automatic execution level on PACE.

##### 2. Statutory Basis

The Exchange believes that this proposal is consistent with section 6(b) of the Act in general,<sup>7</sup> and furthers the objectives of section 6(b)(5) in particular,<sup>8</sup> in that it should promote just and equitable principles of trade, by fostering competitive and orderly markets.

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

The Phlx 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

No written comments were solicited or received.

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

Because the Phlx has designated the foregoing proposed rule change as a rule effecting a change in an existing order-entry or trading system of the Exchange that (1) does not significantly affect the

<sup>1</sup> 17 CFR 200.30-2(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> Letter from Edith Hallahan, Deputy General Counsel, Phlx to Lisa N. Jones, Attorney, Division of Market Regulation, Commission dated January 31, 2002 ("Amendment No. 1"). Amendment No. 1 provides a corrected version of the Exchange's rule text.

<sup>5</sup> The Philadelphia Stock Exchange's Automatic Communication and Execution System (PACE)

<sup>6</sup> See Securities Exchange Act Release No. 44395 (June 6, 2001), 66 FR 31728 (June 12, 2001) (SR-Phlx-2001-46) ("June 2001 rule change").

<sup>7</sup> The Exchange states that following effectiveness of the filing, the Exchange determined not to reduce the minimum auto execution size for various reasons, including changed market conditions and differing views on whether the reduction was appropriate.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).