

Automated Give-Up ("AGU") feature allows a broker to enter and lock-in a trade when it is responsible for both sides of the trade. This occurs when two of its "give-ups" trade with each other or the broker trades with one of its own give-up firms. Without AGU, the broker would be required to submit an entry for one side and either accept the trade or submit an entry for the other side. By using AGU, the broker avoids the need to accept the trade or submit the second entry. Accordingly, use of AGU substantially reduces the use of Nasdaq system resources. The fee for AGU reports is currently \$0.01 per side per 100 shares, with a minimum of 400 shares and a maximum of 7,500 shares (*i.e.*, \$0.04 to \$0.75 per side). In an effort to encourage greater use of ACT, Nasdaq is reducing the fee to a flat \$0.029 per side, the same fee that is charged for ACT's basic trade report, and is eliminating the minimum and maximum restrictions.

Nasdaq ReSourceSM Service

As a "housekeeping" matter, Nasdaq is deleting Rule 7010(q), which contains fees for the Nasdaq ResourceSM Service, a service that Nasdaq had proposed to assist NASD member market centers in meeting their reporting obligations under SEC Rule 11Ac1-5,⁶ but that Nasdaq has decided not to offer.

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,⁷ which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and Section 15A(b)(6) of the Act,⁸ which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that the fee reduction and revenue sharing credit increase implemented by this filing are allocated in an equitable fashion and will result in lower charges for members.

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

Nasdaq believes that the proposed rule change will not 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

Written comments were neither solicited nor received on the proposed rule change contained in this filing.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and subparagraph (f) of Rule 19b-4,¹⁰ thereunder because it establishes or changes a due, fee or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, 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.

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 the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2002-17 and should be submitted by March 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45440; File No. SR-PHLX-2001-109]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Clarifying the Applicability of Phlx Rule 606 to Tethered Communication Devices

February 13, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b-4 thereunder,² notice is hereby given that on December 20, 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 an amendment to the proposed rule change on February 7, 2002.³ 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 Phlx proposes to add new Supplementary Material .03 to Phlx Rule 606 (Wire and Other Connections, Communications and Equipment) to clarify that the rule and relevant policies apply to users of all communication and other electronic devices on the floors of the Exchange, including, but not limited to, tethered⁴ as well as, wireless, wired, voice, and

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jurij Trypupenko, Esquire, Phlx, to Sharon M. Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated February 6, 2002 ("Amendment No. 1"). Amendment No. 1 deletes the second sentence of proposed Supplementary Material .03 to Phlx Rule 606.

⁴ A tether is a hardwire connection to an existing Exchange communication network. It augments the current wireless network on the options floor and allows users to connect their handheld devices to the existing Exchange communication network and thereby interface with member firm communication networks.

⁶ 17 CFR 240.11Ac1-5.

⁷ 15 U.S.C. 78o-3(b)(5).

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f).

data devices. The proposed amendment to Phlx Rule 606 is proposed in conjunction with the Exchange's installation of tether connections and imposition of initial and monthly fees on the users of such tethers, namely registered options traders and floor brokers (but not specialists) on the options trading floor.⁵

The proposed rule change is set forth below. Additions are in italics.

Rule 606. Wire and Other Connections Rule Communications and Equipment

(a) No member or member organization shall establish or maintain any private wire connection, private radio, television or wireless system, between the Exchange Trading Floor and a non-member without application to and approval by the Committee.

* * * * *

Supplementary Material:

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.03 This rule and any relevant Exchange policy are intended to apply to all communication and other electronic devices on the floor of the Exchange, including, but not limited to, wireless, wired, tethered, voice, and data.

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

Due to increases in bandwidth demands and the use of applications by traders, namely on the options floor, that are not designed to effectively operate on the Exchange's shared wireless network, the Exchange installed tether connections on its

options floor. As a result, traders have a choice of how they access the Exchange's local area network ("LAN") in order to receive and transmit non-trading data through hardwired tether connections or wireless connections. The Exchange believes that traders should be subject to consistent rules and disciplinary processes regardless of what type of access to the LAN or communication device they choose. Accordingly, the Exchange proposes to add new Supplementary Material .03 to its Rule 606 (Communications and Equipment) to clarify that the rule and relevant policies apply to users of all communication and other electronic devices on the floors of the Exchange, including, but not limited to, tethered as well as wireless, wired, voice, and data devices.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5)⁷ in particular, 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 protect investors and the public interest by clarifying the applicability of the Exchange rules, and the disciplinary process thereunder, to member users of tethered communication devices on the options floor.

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 either solicited or 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,⁸ provided that the Exchange has given

the Commission written notice of its intention to file the proposed rule change at least five days prior to the date of filing, or such shorter time as designated by the Commission,⁹ it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder. At any time within 60 days of the filing of Amendment No. 1 to 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 Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to waive the 5 day pre-filing requirement and to designate the proposal to become immediately operative upon filing. Waiver of the 5 day requirement and acceleration of the operative date will further clarify without undue delay the applicability of Phlx Rule 606 to various types of communications devices, including those connected via tethers. For these reasons, the Commission finds good cause to waive the 5 day pre-filing requirement and to designate that the proposal become operative immediately upon filing.¹²

II. 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

⁵ See Securities Exchange Act Release No. 44963 (October 19, 2001), 66 FR 64317 (October 26, 2001) (SR-Phlx-2001-84). Footnote 6 notes that the restrictions of Exchange Rule 606 and any other rules applicable to communications apply to all communications via tethers, and that the Exchange intends to propose a clarifying amendment to Rule 606.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ The Exchange requested the Commission to waive the 30 day operative period.

⁹ The Exchange requested, and the Commission agreed, to waive the five day pre-filing requirement

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19-4(f)(6).

¹² 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).

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-2001-109 and should be submitted by March 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45443; File No. SR-Phlx-2001-103]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc., to Amend Phlx Rule 229 to Allow Specialists to Establish a Proprietary Specialized Quote Feed Connection to the PACE System

February 14, 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 21, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On January 16, 2002, the Phlx amended the proposal.³ The Phlx again amended the proposal on February 12, 2002.⁴ The

Phlx filed the proposal pursuant to Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(5)⁶ thereunder as a proposal effecting a change in an existing order-entry or trading system, rendering the proposal effective upon filing with the Commission. 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 Phlx Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System (PACE),⁷ by adopting Supplementary Material .22, to provide specialists with the ability to establish a special proprietary connection to the PACE workstation called a Specialized Quote Feed ("SQF"). The proprietary connection, which is voluntary, would provide specialists on the Exchange's Equity Floor with an electronic interface that would allow specialists to price equity securities with their own quoting models. The ability to use the SQF is subject to the Exchange's prior approval. The text of the proposed rule change is below. Additions are in italics.

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

* * * * *

.22. In addition to the quoting capability in the Exchange's PACE workstation, a specialist may establish a special connection to price equity securities, which is known as a Specialized Quote Feed.

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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 purpose of the proposed rule change is to provide specialists on the Exchange's Equity Floor with the ability to interface with PACE via a proprietary connection (an SQF) that would enable Exchange equity specialists to price equity securities with their own pricing models, subject to the Exchange's prior approval. Such approval would be required by the Exchange's Floor Procedure Committee, which has supervision over all connections or means of communication with the equity trading floor.⁸

The Exchange believes that the proposed rule change should enable Exchange specialists to provide their own stock quotations using their own proprietary systems. The Phlx believes that such proprietary systems should permit equity specialist units to price securities more precisely, and pursuant to their own business models. For instance, some specialist units may consider prices of related futures products when calculating a bid or offer for a security such as an Exchange Traded Fund ("ETF") product.⁹ The Exchange would continue to make available its quotation model on the PACE workstation, which only considers the price of the individual security in its quotation calculation. The Exchange believes that the SQF would make equity quotations disseminated by the Exchange more efficient.

2. Statutory Basis

The Phlx believes the proposed rule change is consistent with Section 6 of the Act¹⁰ in general, and with Section 6(b)(5) of the Act¹¹ specifically, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect

⁸ See Exchange By-Law Article X, Section 10-16.

⁹ The price of an ETF product is based on a number of factors. Although the Exchange offers its specialists a pricing system through PACE, specialists may wish to use their own proprietary pricing models that include their own calculations concerning the variables underlying the pricing of ETFs. For this reason, the Phlx has decided to provide specialists, on a voluntary basis, with an interface with PACE, or an SQF, that would allow them to deploy their own pricing models as an alternative to the PACE model. See Amendment No. 1.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

¹³ 7 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See January 15, 2002 letter from Richard S. Rudolph, Counsel, Phlx, to Joseph P. Morra, Special Counsel, Division of Market Regulation ("Division"), SEC ("Amendment No. 1"). In Amendment No. 1, the Phlx clarified the rationale behind offering specialists a voluntary alternative interface with the Philadelphia Stock Exchange Automated Communication and Execution System (PACE) that would allow them to deploy their own pricing models as an alternative to the PACE model.

⁴ See February 11, 2002 letter from Richard S. Rudolph, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, SEC ("Amendment No. 2"). In Amendment No. 2, the Phlx deleted the phrase "subject to Exchange approval" from the proposed rule text, and clarified that the requirement of the Floor Procedure Committee approval set forth in Phlx Rule 444, Wire Connections Between Exchange and Members' Offices, applies to Specialized Quote Feed users on the Phlx's Equity Trading Floor. For purposes of calculating the 60-day abrogation period, the Commission considers the 60-day abrogation period to have commenced on February 12, 2002, the date on which the Phlx filed Amendment No. 2.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(5).

⁷ PACE is the Exchange's automated order routing, delivery, execution and reporting system for the equity trading floor. PACE includes 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 Exchange Rule 229. 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.