

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45575; File No. SR-Phlx-2001-25]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's Auto-Quote System

March 15, 2002.

#### I. Introduction

On March 5, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("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 relating to the Exchange's Auto-Quote System. The Phlx submitted amendments to the proposed rule change on August 29, 2001<sup>3</sup> and October 31, 2001.<sup>4</sup> The **Federal Register** published the proposed rule change and Amendment Nos. 1 and 2 for comment on November 23, 2001.<sup>5</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

#### II. Description of Proposal

The Phlx proposes to amend Commentary .01 to Exchange Rule 1080 to add language providing an enhanced description of Auto-Quote, the Exchange's electronic options pricing system and to permit the specialist to consult with the trading crowd in setting Auto-Quote parameters.

On September 11, 2000, the Commission issued an order<sup>6</sup> that requires in part that the Phlx adopt new, or amend existing, rules to include any practice or procedure, not currently authorized by rule, whereby market makers determine by agreement the spreads or option prices at which they

will trade any option class.<sup>7</sup> The Exchange submitted the proposed rule change pursuant to this undertaking.

The proposed rule change would incorporate a more thorough description of Auto-Quote into Exchange rules. First, it would describe its various pricing models, inputs, and parameters. Second, it would provide that specialists may establish a specialized proprietary connection ("specialized quote feed") that by-passes the Auto-Quote system. Finally, it would provide that while the specialist selects the pricing model and inputs for Auto-Quote, he or she may (but is not required to and may, for proprietary business reasons, determine not to) consult with the trading crowd on the pricing model and the inputs to be used. The proposed rule change also provides that if the specialist consults with one member of the crowd, all members of the crowd present must be given the opportunity to provide input.<sup>8</sup> However, members of the trading crowd would not be required to provide input to the specialist in setting Auto-Quote parameters.<sup>9</sup>

#### III. Discussion

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>10</sup> Specifically, the Commission believes that the proposed rule change is consistent with the section 6(b)(8)<sup>11</sup> requirement that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the proposed rule change should deter

<sup>7</sup> See Section IV.B.j. of the Order.

<sup>8</sup> See Amendment No. 1, *supra* note 3. Among other things, Amendment No. 1: (i) states the reasons why a specialist would wish to consult with the trading crowd about specific Auto-Quote parameters; (ii) clarifies that if a specialist decides to consult with one member of the trading crowd about the Auto-Quote parameters, all members of the crowd that are present at the time must be given the opportunity to consult; and (iii) revises proposed Commentary .01(b)(ii) to Phlx Rule 1080 to state that the specialist may determine which model to select per option, not per series, as previously stated.

<sup>9</sup> See Amendment No. 2, *supra* note 4. Amendment No. 2 revises the text of proposed Commentary .01(b)(ii) to Phlx Rule 1080 to clarify that where the specialist determines to consult with and/or agree with the trading crowd with respect to selecting the Auto Quote System model or setting the parameters, members of the trading crowd are not required to provide input to the specialist about these decisions.

<sup>10</sup> In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(8).

collective action, except as authorized by the Exchange's rules, by clearly establishing in the Exchange's rules the responsibilities of, and conduct permitted by, Exchange members in setting Auto-Quote parameters.<sup>12</sup> For instance, the proposal would permit specialists to receive input from members of the crowd in setting the parameters of the formula used to automatically update options quotations. The Commission believes it is reasonable for the Exchange's rules to permit the members of the crowd to be given a voice in setting autoquote parameters because, pursuant to the Exchange's rules, they will be obligated to execute orders at the resultant quote. Finally, the Commission finds that the proposed rule change is designed to effectively limit the circumstances in which collective action is permissible.

#### IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-Phlx-2001-25) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 02-6896 Filed 3-21-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45570; File No. SR-Phlx-2001-114]

### Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Aggregation of Individual Violations of Exchange Order Handling Rules and Option Floor Procedure Advices

March 15, 2002.

#### I. Introduction

On December 18, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to

<sup>12</sup> The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</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>3</sup> Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 28, 2001 ("Amendment No. 1").

<sup>4</sup> Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated October 30, 2001 ("Amendment No. 2").

<sup>5</sup> Securities Exchange Act Release No. 45060 (November 15, 2001), 66 FR 58771.

<sup>6</sup> See Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000) ("Order").