

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45713; File No. SR-Phlx-2001-35]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 2, 3, 4, and 5 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Providing Automatic Executions for Public Customer Orders When Another Market Is Disseminating Quotes Deemed Not To Be Reliable

April 9, 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 March 12, 2001, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “Exchange”) the proposed rule change as described in Items I, II, and III below,<sup>3</sup> which Items have been prepared by the Exchange. Phlx submitted Amendment Nos. 1, 2, 3, 4, and 5 to the proposed rule change on September 19, 2001,<sup>4</sup> January 11, 2002,<sup>5</sup>

March 1, 2002,<sup>6</sup> March 8, 2002,<sup>7</sup> and April 3, 2002,<sup>8</sup> respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended by Amendment Nos. 2, 3, 4, and 5, from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X),<sup>9</sup> to provide that, in situations in which the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is

unavailable, two Floor Officials), determines that quotes in options on the Exchange or other markets are deemed not to be reliable, such quotes would be excluded from the calculation of the NBBO for purposes of AUTO-X, and eligible customer orders may be executed automatically if the Phlx quote is the NBBO, based on the remaining markets whose quotes are not deemed to be unreliable. Such determination may be made by way of notification from another market that its quotes are not firm or are unreliable; administrative message from the Option Price Reporting Authority (“OPRA”); quotes received from another market designated as “not firm” using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm.

The text of the proposed rule change, as amended by Amendment Nos. 2, 3, 4, and 5, follows. New text is italicized.

#### Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)

- (a)-(b) No change.
- (c) (i)-(ii) No change.
- (iii)-(iv) RESERVED.

(v)(A) *Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in options on the Exchange or another market or markets are subject to relief from the firm quote requirement set forth in the SEC Quote Rule, as defined in Exchange Rule 1082(a)(iii) (the “Quote Rule”), customer market orders will receive an automatic execution at NBBO based on the best bid or offer in markets whose quotes are not subject to relief from the firm quote requirement set forth in the Quote Rule. Such determination may be made by way of notification from another market that its quotes are not firm or are unreliable; administrative message from the Option Price Reporting Authority (“OPRA”); quotes received from another market designated as “not firm” using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm. AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are excluded from the calculation of NBBO. The Exchange may determine to exclude quotes from its calculation of NBBO on a series-by-series basis or issue-by-issue basis, or may determine to exclude all options quotes from an exchange, where*

<sup>6</sup> In Amendment No. 3, the Exchange: (1) clarified that the Exchange may determine to exclude quotes from its calculation of the NBBO on a series-by-series basis or issue-by-issue basis, or may determine to exclude all options quotes from an exchange, where appropriate; (2) represented that it maintains, on a daily basis, records of each instance in which it determines to exclude quotes from another exchange from the Exchange’s calculation of the NBBO; and (3) stated that it will notify other exchanges of the determination to exclude its quotes from the Exchange’s calculation of the NBBO and of any determination to re-include such exchange’s quotes in the Exchange’s calculation of the NBBO. See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated February 28, 2002 (“Amendment No. 3”).

<sup>7</sup> In Amendment No. 4, the Exchange proposed to amend the rule text to require the Exchange to maintain a record of each instance in which another exchange’s quotes are excluded from the Exchange’s calculation of the NBBO, and to notify such other exchange that its quotes have been so excluded. See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 7, 2002 (“Amendment No. 4”).

<sup>8</sup> In Amendment No. 5, the Exchange proposed to amend the rule text to provide the documentation of each instance in which another exchange’s quotes are excluded from the Exchange’s calculation of the NBBO shall include: identification of the option(s) affected by such action; the date and time such action was taken and concluded; identification of the other exchange(s) whose quote were excluded from the Exchange’s calculation of NBBO; identification of the Chairman of the Options Committee, his designee, or two Floor Officials (as applicable) who approved such action; the reasons for which such action was taken; and identification of the specialist and the specialist unit. See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 2, 2002 (“Amendment No. 5”).

<sup>9</sup> AUTOM is the Exchange’s electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM’s automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

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

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

<sup>3</sup> At the request of the Phlx, these Sections have been revised to conform to the substance of Amendment Nos. 2, 3, 4, and 5. Telephone call among Deborah Flynn, Assistant Director, Division of Market Regulation (“Division”), Commission, Jennifer Lewis, Attorney, Division, Commission, and Richard S. Rudolph, Counsel, Phlx, on February 21, 2001.

<sup>4</sup> In Amendment No. 1, the Exchange proposed to amend the rule text to provide that customer market orders will receive an automatic execution at the national best bid or offer (“NBBO”) based on the best bid or offer in markets whose quotes are not subject to relief from the firm quote requirement. See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 18, 2001 (“Amendment No. 1”).

<sup>5</sup> In Amendment No. 2, the Exchange proposed to amend the rule text to describe how the Exchange would determine that quotes in options on the Exchange or another market or markets should be excluded from the Exchange’s calculation of the national best bid or offer (“NBBO”). See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 11, 2002 (“Amendment No. 2”). Amendment No. 2 supersedes and replaces Amendment No. 1 in its entirety.

appropriate. The Exchange shall maintain a record of each instance in which another exchange's quotes are excluded from the Exchange's calculation of NBBO, and shall notify such other exchange that its quotes have been so excluded. Such documentation shall include: identification of the option(s) affected by such action; the date and time such action was taken and concluded; identification of the other exchange(s) whose quotes were excluded from the Exchange's calculation of NBBO; identification of the Chairman of the Options Committee, his designee, or two Floor Officials (as applicable) who approved such action; the reasons for which such action was taken; and identification of the specialist and the specialist unit. The Exchange will maintain these documents pursuant to the record retention requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder.

(B) Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in options on the Exchange or another market or markets previously subject to relief from the firm quote requirement set forth in the Quote Rule are no longer subject to such relief, such quotations will be included in the calculation of NBBO for such options. Such determination may be made by way of notification from another market that its quotes are firm; administrative message from the Option Price Reporting Authority ("OPRA"); and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are firm. AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are again included in the calculation of NBBO.

(d)-(j) No change.

Commentary: No change.

## 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 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 permit the Exchange to exclude from the calculation of NBBO (for purposes other than the NBBO Feature as described in footnote 10, *infra*) certain quotes from other markets that are deemed not to be reliable.<sup>10</sup> The consequence of this change would be that customer market orders and marketable limit orders received via AUTOM that were otherwise eligible for automatic execution may receive an automatic execution based upon reliable quotes, rather than a manual execution, provided that the Phlx quote is the NBBO.

Under current Exchange rules, orders for equity options received via AUTOM that would otherwise be eligible for automatic execution via AUTO-X are nonetheless executed manually where the specialist's bid or offer is inferior to the current best bid or offer in another market by any amount.<sup>11</sup> Therefore, if another market is disseminating the NBBO, AUTO-X will not permit the automatic execution of an otherwise eligible order *even if such other market's disseminated quote is unreliable*. Phlx believes this unreasonably and unfairly deprives customers who send their eligible orders to the Exchange via AUTOM expecting to receive an automatic execution (where the Phlx disseminated quote is the NBBO) of the benefits of such an execution. Moreover, Phlx believes this creates the risk that operational or other failures at another market will result in the Exchange potentially being flooded with orders that will have to be manually processed—thereby increasing the potential for errors, missed executions, and other adverse consequences, as more fully described below.

The Exchange believes that the customer and the marketplace are better served by permitting the Exchange (subject to adherence to carefully defined standards and procedures) to

<sup>10</sup> Under current Exchange rules, certain AUTO-X eligible orders may be automatically executed at the NBBO disseminated by another options exchange, provided that the NBBO is not better than the specialist's best bid/offer by a predetermined "step-up parameter." The enhancement is known as the "NBBO Feature." The NBBO Feature would execute AUTO-X eligible orders at the NBBO for certain options designated by the Options Committee as eligible for the NBBO Feature, called "automatic step-up options." See Exchange Rule 1080(c)(i).

<sup>11</sup> See Exchange Rule 1080(c)(i)(C)(3).

"filter" out unreliable quotes of other markets so as to permit the AUTO-X feature to continue to execute otherwise eligible orders where the Exchange's quote is the "true" NBBO (*i.e.*, the NBBO determined after excluding the unreliable quotes).

#### a. Unreliable Quotes

As stated above, where the NBBO Feature (as described in footnote 10, *supra*) is not engaged, in circumstances in which the Phlx specialist's best bid or offer in a series is inferior to the current best bid or offer in another market by any amount, orders for such series that would otherwise be eligible for automatic execution are executed manually. Currently, this is true even when the quotes disseminated by the exchange with the superior bid or offer are not reliable.

A quote could be deemed not to be reliable because of notification from another market that its quotes are not firm or are unreliable; administrative message from OPRA; quotes received from another market designated as "not firm" using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm.

#### b. Consequences of Manual Execution

The Exchange has sought to ensure that customer orders would not be disqualified from receiving an automatic execution due to another market's dissemination of unreliable quotes. The Exchange believes that manual execution of customer market orders in the circumstances described above deprives customers of automatic executions to which they should be entitled. The Exchange believes it would be unfair to deprive all eligible customer orders of automatic executions where the Phlx quote would be the NBBO but for the away market's unreliable quote, simply because another exchange is disseminating unreliable quotes that cause orders otherwise eligible for AUTO-X to be handled manually.

The Exchange believes if it determines that such quotes are unreliable, such quotes should be filtered from AUTOM in the calculation of NBBO for purposes of determining AUTO-X eligibility, and the customer's order should be executed automatically based on the Exchange's quote and quotes from other exchanges that are not deemed to be unreliable.

#### c. Procedures and Conditions for Determining Unreliable Quotes

Proposed Rule 1080(c)(v)(A) authorizes the Chairman of the Options

Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) to determine that quotes in specified options or series of options or in respect of specified markets are not reliable under the specific circumstances set forth in the proposed rule.

This authority would be expected to be exercised upon the request of the specialist, and only upon notification from another market that its quotes are not firm or are unreliable; receipt of administrative message from OPRA; receipt of quotes from another market designated as "not firm" using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm.

As stated above, the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) would be authorized, under the circumstances set forth above, to determine when quotes from another market may be deemed unreliable. Such designee would be required to be a member of the Options Committee.

The Exchange would be permitted to determine to exclude quotes from its calculation of the NBBO on a series-by-series basis or issue-by-issue basis, or would be permitted to determine to exclude all options quotes from an exchange, where appropriate.<sup>12</sup>

Phlx also proposes to amend the rule text to require the Exchange to maintain a record of each instance in which another exchange's quotes are excluded from the Exchange's calculation of the NBBO, and to notify such other exchange that its quotes have been so excluded.<sup>13</sup>

In addition, Phlx proposes to amend the rule text to provide that documentation of each instance in which another exchange's quotes are excluded from the Exchange's calculation of NBBO shall include: identification of the option(s) affected by such action; the date and time such action was taken and concluded; identification of the other exchange(s) whose quotes were excluded from the Exchange's calculation of NBBO; identification of the Chairman of the Options Committee, his designee, or two Floor Officials (as applicable) who approved such action; the reasons for which such action was taken; and

identification of the specialist and the specialist unit. The Exchange will maintain these documents pursuant to the record retention requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder.<sup>14</sup>

#### d. Re-Inclusion of Quotes in Calculation of NBBO

Proposed Rule 1080(c)(v)(B) authorizes the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), to determine that quotes in options on the Exchange or other markets previously deemed not to be reliable pursuant to proposed Rule 1080(c)(v)(A) are again reliable, such quotations would again be included in the calculation of NBBO for such options.

Such determination would be permitted to be made by way of notification from another market that its quotes are firm; administrative message from OPRA; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are firm. AUTOM customers would be duly notified via electronic message from AUTOM that such quotes are again included in the calculation of NBBO.<sup>15</sup>

#### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>16</sup> in general, and with section 6(b)(5),<sup>17</sup> in particular, because it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by allowing customer market orders to be executed automatically when another market is disseminating unreliable quotes that

would otherwise cause such orders to be executed manually.

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

The Phlx does not believe that the proposed rule change, as amended, will impose any 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 Phlx 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 proposal, 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 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-2001-35 and should be submitted by May 6, 2002.

<sup>14</sup> See Amendment No. 5, supra note 8.

<sup>15</sup> The Exchange notes that it has filed an amendment to a proposed rule change that proposes to institute a similar "filtering" feature for unreliable away-market quotes in relation to the NBBO Feature. For reasons similar to those specified in this filing, the Exchange has proposed to filter our unreliable quotes of other markets when calculating the NBBO so as to permit automatic executions at the "true" NBBO (*i.e.*, excluding the unreliable quotes), where the criteria of the NBBO Feature are met, rather than handling those orders manually. The Exchange proposes that the circumstances and procedures under which filtering may occur for purposes of the instant filing would be identical to those requested to apply to the NBBO Feature. See Securities Exchange Act Release No. 45714 (April 9, 2002) (SR-Phlx-00-93).

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See Amendment No. 3, supra note 6.

<sup>13</sup> See Amendment No. 4, supra note 7.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45710; File No. SR-Phlx-2001-27]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Disengagement of Auto-Ex Due to Extraordinary Circumstances

April 9, 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 March 7, 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 self-regulatory organization. Phlx submitted Amendment No. 1 to the proposed rule change on March 28, 2001.<sup>3</sup> Phlx submitted Amendment No. 2 to the proposed rule change on December 20, 2001.<sup>4</sup> Phlx submitted Amendment Nos. 3 and 4 to the proposed rule change on

March 1, 2002,<sup>5</sup> and March 8, 2002,<sup>6</sup> respectively. The Commission's 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 Options Floor Procedure Advice ("OFPA") A-13, Auto Execution Engagement/Disengagement Responsibility, and Phlx Rule 1080(e), Extraordinary Circumstances, to provide for a re-evaluation of the disengagement of AUTO-X<sup>7</sup> during extraordinary circumstances. Specifically, when AUTO-X is disengaged due to extraordinary circumstances, the Exchange would be required to review and confirm that such circumstances still exist five minutes after the initial declaration of extraordinary circumstances, and every fifteen minutes thereafter. Additionally, the Exchange proposes to amend Phlx Rule 1080(e) to specify the definition of extraordinary circumstances under which AUTO-X may be disengaged,<sup>8</sup> or

<sup>5</sup> In Amendment No. 3, the Exchange: (1) Proposed conforming amendments to Option Floor Procedure Advice A-13; (2) proposed an amendment to Exchange Rule 1080(c) to provide that the Options Committee may for any period restrict the use of AUTO-X on the Exchange in any option or series, provided that the effectiveness of any such restriction shall be conditioned upon its having been approved by the Commission pursuant to section 19(b) of the Act and the rules and regulations thereunder; and (3) represented that, pursuant to Exchange Rule 1080(f)(v), AUTOM users are notified in the event that AUTO-X is disengaged. See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated February 28, 2002 ("Amendment No. 3").

<sup>6</sup> In Amendment No. 4, the Exchange proposed to amend the rule text to provide that AUTOM users are notified in the event that AUTO-X is disengaged. See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 7, 2002 ("Amendment No. 4").

<sup>7</sup> AUTO-X is a feature of AUTOM, the Exchange's electronic order delivery and reporting system that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options.

<sup>8</sup> The Exchange notes that the Commission has directed that the respondent options exchanges adopt new rules, or amend existing rules, concerning their automated quotation and execution systems. The Exchanges must "specify the circumstances, if any, under which automated execution systems can be disengaged or operated in any manner other than the normal manner set forth in the exchange's rules and require the documentation of the reasons for each decision to disengage an automated execution system or operate it in any manner other than the normal manner." See Section IV.B.h.(i)(bb) of the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and

operated in a manner other than the normal manner set forth in the Exchange's rules.<sup>9</sup> The Exchange is also proposing record keeping requirements to be kept when AUTO-X is disengaged and reengaged. The text of the proposed rule change, as amended, follows. New text is italicized; deletions are in brackets.

Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)

(a)-(b) No change.

(c) AUTO-X—AUTO-X is a feature of AUTOM that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO-X automatically executes eligible orders using the Exchange disseminated quotation and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO-X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO-X is not engaged. An order may also be executed partially by AUTO-X and partially manually.

The Options Committee may for any period restrict the use of AUTO-X on the Exchange in any option or series *provided that the effectiveness of any such restriction shall be conditioned upon its having been approved by the Securities and Exchange Commission pursuant to section 19(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder.*

Currently, orders up to 100 contracts, subject to the approval of the Options Committee, are eligible for AUTO-X.

The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO-X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to

Imposing Remedial Actions; *In the Matter of Certain Activities of Options Exchanges*, Securities Exchange Act Release No. 43268 (September 11, 2000).

<sup>9</sup> See Exchange Rule 1080(c) generally. See also SR-Phlx-2001-24, a proposed rule change to set forth the circumstances in which AUTO-X will be disengaged. Securities Exchange Act Release No. 45436 (February 12, 2002), 67 FR 7728 (February 20, 2002).

<sup>18</sup> 17 CFR 200.30-3(a)(12)

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

<sup>2</sup> 17 CFR 20.19b-4.

<sup>3</sup> In Amendment No. 1, the Exchange requested accelerated effectiveness and deleted the following sentence from footnote 4: "The Exchange also notes that extraordinary circumstances are "unusual market conditions" for purposes of Rule 11Ac1-1 under the Act." See letter from Diana Tenenbaum, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 27, 2001 ("Amendment No. 1").

<sup>4</sup> In Amendment No. 2, the Exchange withdrew File No. SR-Phlx-2001-17 and proposed to define the extraordinary circumstances that would result in the disengagement of the Exchange's Automatic Execution System ("AUTO-X") and to set forth procedures to be followed when AUTO-X is disengaged due to extraordinary circumstances. See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated December 19, 2001 ("Amendment No. 2"). Amendment No. 2 supersedes and replaces Amendment No. 1 in its entirety.