

Exchange believes that, because the requirement provides so little flexibility, it no longer serves the purpose for which it was created, *i.e.*, encouraging greater Market Maker participation on Auto-Ex. Thus, despite the fact that LMMs would prefer Market Makers to participate on Auto-Ex as their risk profiles allow, the Exchange believes that the current requirement limits participation in an all-or-none fashion. As a consequence, the Exchange proposes to remove the log on requirement in its entirety in order to encourage Market Makers to log on to Auto-Ex to the extent that their business models permit.

## 2. Statutory Basis

The Exchange believes that the proposed rule change 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, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary 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*

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: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section

19(b)(3)(A)<sup>8</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The PCX seeks to have the proposed rule change become operative immediately in order to maintain competition and efficiency among its market makers.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately upon filing as of April 25, 2002, to allow the PCX to maintain competition among its market makers and to encourage market makers to participate on Auto-Ex. At any time within 60 days of the filing of 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.

## 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 PCX. All submissions should refer to File No.

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

<sup>9</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

SR-PCX-2002-23 and should be submitted by June 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

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

[FR Doc. 02-12116 Filed 5-14-02; 8:45 am]

BILLING CODE 8010-01-U

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45893; File No. SR-Phlx-2002-25]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Increasing the Maximum Guaranteed AUTO-X Size to 250 Contracts

May 8, 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 April 19, 2002, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") 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 Phlx. On April 25, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change has been filed by the Phlx as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.<sup>4</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 Phlx Rule 1080(c) to increase to 250 contracts the maximum order size of option contracts that are eligible to be executed on the Exchange's automatic execution system ("AUTO-X"), which is part of the Exchange's Automated Options

<sup>10</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> See letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 24, 2002 ("Amendment No. 1"). In Amendment No. 1, the Phlx amended its proposed rule text to eliminate a redundant sentence regarding the 250 contract maximum AUTO-X guarantee size for options on the Nasdaq-100 Index Tracking Stock ("QQQ").

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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

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

Market ("AUTOM") System. 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 routed to AUTOM's automatic execution feature, AUTO-X, if they are eligible for execution on 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. Currently, customer market and marketable limit orders of up to 100 contracts are eligible for AUTO-X.<sup>5</sup>

Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed 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. Currently, orders up to [100] 250 contracts, subject to the approval of the Options Committee, are eligible for AUTO-X. [With respect to options on the Nasdaq-100 Index Tracking Stock ("QQQ"), orders of up to 250 contracts 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 section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(c)(i)(A)-(E) No change.

(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 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 increase the maximum order size for eligibility for AUTO-X from 100 contracts to 250 contracts.<sup>6</sup> Under the rules of the Exchange, through AUTOM, orders are routed from member firms directly to the appropriate specialist on the trading floor. Of the public customer market and marketable limit orders routed through AUTOM, certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. These orders are automatically executed at the disseminated quotation price on the Exchange and reported back to the originating firm.<sup>7</sup>

The Exchange represents that AUTO-X affords prompt and efficient automatic executions at the disseminated quotation price on the Exchange. Therefore, the Exchange believes that increasing automatic execution levels should provide the benefits of automatic execution to a larger number of customer orders. Further, the Exchange notes that this increase from 100 contracts to 250

contracts is consistent with similar Commission-approved increases to the automatic executions levels on other options exchanges.<sup>8</sup>

The Exchange notes that there are many safeguards incorporated into Exchange rules to ensure the appropriate handling of AUTO-X orders. For example, Phlx Rule 1080(f)(iii) states that the specialist is responsible for the remainder of an AUTOM order where a partial execution has occurred. Phlx Rule 1015 governs execution guarantees and requires the trading crowd to ensure that public orders are filled at the best market to a minimum of the disseminated size. Violations of any of these provisions could be referred to the Business Conduct Committee for disciplinary action.

The Wheel is a mechanism that allocates AUTO-X trades among specialists and Registered Options Traders ("ROT's").<sup>9</sup> An ROT has discretion to participate on the Wheel to trade any option class to which he is assigned. An increase in the maximum AUTO-X order size does not prevent an ROT from declining to participate on the Wheel.<sup>10</sup> Because the Wheel rotates in two-lot to ten-lot increments depending upon the size of the order, no single ROT will be allocated the entire 250 contracts.

The Exchange also has procedures that permit a specialist to disengage AUTO-X in extraordinary circumstances.<sup>11</sup> AUTOM users are notified of such circumstances.

With respect to financial responsibility issues, the Exchange notes that it has a minimum net capital

<sup>8</sup> The Exchange notes that the Commission has approved increases in automatic execution levels from 100 contracts to 250 contracts on the American Stock Exchange LLC ("Amex"). See Securities Exchange Act Release No. 45628 (March 22, 2002), 67 FR 15262 (March 29, 2002) (SR-Amex-2001-94). The Exchange further notes that the Commission has approved increases in automatic execution levels from 100 contracts to 250 contracts on the Pacific Exchange, Inc. ("PCX"). See Securities Exchange Act Release No. 45641 (March 25, 2002), 67 FR 15445 (April 1, 2002) (SR-PCX-2001-48).

<sup>9</sup> Unlike ROTs, specialists are required to participate on the Wheel. See Phlx Rule 1080(g).

<sup>10</sup> See Exchange Options Floor Procedure Advice F-24(e)(i).

<sup>11</sup> See Phlx Rule 1080(e). The Exchange notes that it has filed amendments relating to the disengagement of AUTO-X in extraordinary circumstances pursuant to the 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) (File No. 3-10282), which are not effective as of the date of filing of the instant proposal. See File No. SR-Phlx-2001-27.

<sup>5</sup> See Securities Exchange Act Release No. 44404 (June 11, 2001), 66 FR 32857 (June 18, 2001) (File No. SR-Phlx-2001-51) (order approving maximum order size eligibility of 100 contracts for AUTO-X).

<sup>6</sup> *Id.*

<sup>7</sup> See Phlx Rule 1080(c).

requirement respecting ROTs.<sup>12</sup> Furthermore, an ROT's clearing firm performs risk management functions to ensure that the ROT has sufficient financial resources to cover positions throughout the day. In this regard, the function includes real-time monitoring of positions. The Exchange believes that clearing firm procedures address the issue of whether an ROT has the financial capability to support trading of options orders as large as 250 contracts.

The Exchange believes that the increase in order size eligibility for AUTO-X orders should provide customers with quicker executions for a larger number of orders, by providing automatic rather than manual executions, thereby reducing the number of orders subject to manual processing. The Exchange also believes that increasing the AUTO-X maximum order size should not impose a significant burden on operation or capacity of the AUTOM System and will give the Exchange better means of competing with other options exchanges for order flow.

The Exchange represents that it will issue a circular to members and member organizations advising them of the increased maximum AUTO-X guarantee. The Exchange also represents that it posts AUTO-X guarantees on its web site on an issue-by-issue basis.

## 2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>14</sup> in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by enhancing efficiency by providing automatic executions to a larger number of options orders.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary 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*

No written comments were either solicited or received.

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

Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A)<sup>15</sup> of the Act and Rule 19b-4(f)(6)<sup>16</sup> thereunder.<sup>17</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx seeks to have the proposed rule change, as amended, become operative immediately in order to remain competitive with other exchanges with similar rules in effect.<sup>18</sup>

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, operative immediately upon filing as of April 19, 2002, to allow the Phlx to compete with other options exchanges that currently have a maximum automatic execution eligibility limit of 250 contracts.<sup>19</sup> At any time within 60 days of the filing of 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.<sup>20</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 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-2002-25 and should be submitted by June 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

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

[FR Doc. 02-12117 Filed 5-14-02; 8:45 am]

**BILLING CODE 8010-01-P**

## **SMALL BUSINESS ADMINISTRATION**

### **[Declaration of Disaster #3415]**

#### **Commonwealth of Kentucky**

As a result of the President's major disaster declaration on May 7, 2002, I find that Breckinridge, Crittenden, Grayson, Hancock, Hardin, Henderson, Hopkins, McLean, Meade, Ohio, Union and Webster Counties in the Commonwealth of Kentucky constitute a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on April 27, 2002 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 6, 2002 and for economic injury until the close of

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

<sup>18</sup> See *supra* note 8.

<sup>19</sup> 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).

<sup>20</sup> See section 19(b)(3)(C) of the Act, 15 U.S.C. 78(b)(3)(C). For purposes of calculating the 60 day abrogation period, the Commission considers the period to commence on April 25, 2002, the date that the Exchange filed Amendment No. 1.

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<sup>12</sup> See Phlx Rule 703.

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

<sup>14</sup> 15 U.S.C. 78f(b)(5).