

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46474; File No. 4-208]

### Intermarket Trading System; Order Granting Approval of the Nineteenth Amendment to the ITS Plan Relating to the Philadelphia Stock Exchange, Inc.'s Implementation of a Remote Specialist Program

On May 3, 2002, the Intermarket Trading System Operating Committee ("ITSOC") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 11A3a3-2 thereunder,<sup>2</sup> a proposed amendment ("Nineteenth Amendment") to the restated ITS Plan.<sup>3</sup> The proposed amendment recognized the Phlx's implementation of a remote specialist program. Notice of the proposed amendment appeared in the **Federal Register** on June 26, 2002.<sup>4</sup> The Commission received no comments on the proposed amendment. This order approves the proposed amendment.

The proposed amendment recognizes the Phlx's implementation of its remote specialist program.<sup>5</sup> Specifically, the ITSOC proposes to amend Sections 1 ("Definitions"), 6(a)(i)(A) ("Receipt of Quotations"), 6(a)(ii) ("Description of ITS Transactions"), and 8(a) ("System Access") of the ITS Plan to include references regarding the premises of Phlx Remote Specialists on which ITS stations are located, and define the terms "Phlx Remote Specialist,"<sup>6</sup> "Phlx

Registered Specialist,"<sup>7</sup> and "Phlx Designated Specialist."<sup>8</sup>

The Commission finds that the proposed amendment is consistent with the Act and the rules and regulations thereunder applicable to the ITS and, in particular, Sections 11A(a)(1)(C)(ii) and (D) of the Act,<sup>9</sup> and Rule 11A3-2(c)(2) thereunder,<sup>10</sup> which require among other things, that a plan amendment must be necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and shall remove impediments to, and perfect the

<sup>7</sup> The term "Phlx Registered Specialist" is defined in the proposed amendment as a Phlx member who has been appointed and registered pursuant to Phlx Rule 202 to act as a market maker in one or more securities traded through ITS.

<sup>8</sup> The term "Phlx Designated Specialist" is defined in the proposed amendment as a Phlx Registered Specialist appointed by the Phlx to coordinate the handling of commitments to trade received by the Phlx.

The Designated Specialist ("DS") is responsible for responding to incoming ITS Commitments. In the case of a Commitment that has been divided among more than one Specialist, the DS is (a) the Specialist who has been allocated the largest individual portion of the Commitment pursuant to the split, or (b) if two or more Specialists each receives an equal amount of the Commitment split which is larger than the amount allocated to any other Specialist, the Specialist who first quoted the volume. Any portion of the Commitment that remains unallocated after the Commitment split (the "Remaining Portion") is made available for execution by the Primary Specialist and the Remaining Portion is ignored for purposes of determining the Designated Specialist.

Inbound ITS Commitment volume is split based on PHLX "available volume" at the time the Commitment arrives, which may consist of two or more Specialists. The "available volume" is (1) the displayed bid or offer size, plus (2) any non-displayed automatic matchable interest (in each case, less any volume that has been marked by the system as unavailable because of either a trade that has occurred or because of another incoming Commitment that was received prior to the arrival of the Commitment with respect to which the split is being made).

Automatic matchable interest represents manually quoted interest and round lot limit order volume other than (a) block limit orders that have not been displayed, (b) All Or None limit orders, and (c) Short Sale limit orders that have not been displayed. The incoming ITS Commitment is split among the available volume based on price, then account type (agency before principal) and then time, if the available volume is greater than the inbound ITS Commitment. For instance, as between two principal quotes at the same price, the earlier in time participates first and may fill the entire incoming Commitment up to the size of his or her bid/offer.

In the case of a Commitment divided among more than one Specialist, after a certain time has expired (exposing their split of the ITS Commitment to eligible specialists and allowing the non-Designated Specialists to respond), then the Designated Specialist may respond, which causes a single Phlx response to be sent. See email from Carla Behnfeldt, Phlx, to Katherine England, Assistant Director, Joseph Morra, Special Counsel, and Lisa N. Jones, Attorney, Division of Market Regulation, Commission, dated September 5, 2002.

<sup>9</sup> 15 U.S.C. 78k-1(a)(1)(C) (ii) and (D).

<sup>10</sup> 17 CFR 240.11A3-2(c)(2).

mechanisms of, a national market system.

The proposal provides for the recognition of the Phlx's use of remote specialists to carry out their specialist operations off the floors of the Phlx, similar to the BSE and the PCX.<sup>11</sup> The Commission believes that the proposed amendment should improve the efficiency and reliability of ITS.

*It is therefore ordered*, pursuant to Section 11A(a)(3)(B) of the Act,<sup>12</sup> that the proposed Nineteenth Amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46479; File No. SR-Amex-2002-57]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Automatic Execution of Broker-Dealer Options Orders

September 10, 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 June 24, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. On August 2, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On

<sup>11</sup> See Securities and Exchange Act Release No. 43520 (November 3, 2000), 65 FR 68165 (November 14, 2000) (order approving the recognition of BSE's and PCX's remote specialist programs in ITS).

<sup>12</sup> 15 U.S.C. 78k-1(a)(3)(B).

<sup>13</sup> 17 CFR 200.30-3(a)(29).

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

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

<sup>3</sup> See Letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer L. Colihan, Special Counsel, Division of Market Regulation ("Division"), Commission, dated August 1, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange: (1) Re-numbered the last paragraph of Amex Rule 933 as "(e)"; (2) clarified that options orders that are routed to the specialist's Amex Options Display Book ("AODB") are manually executed; (3) deleted a footnote relating to trading on the International Securities Exchange; and (4)

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 240.11Aa3-2.

<sup>3</sup> The ITS is a National Market System ("NMS") plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. See Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

The ITS Participants include the American Stock Exchange LLC (Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") ("Participants").

<sup>4</sup> See Securities Exchange Act Release No. 46091 (June 19, 2002), 67 FR 43182.

<sup>5</sup> See Securities Exchange Act Release No. 45184 (December 21, 2001), 67 FR 622 (January 4, 2002) (order approving SR-Phlx-2001-98).

<sup>6</sup> The term "Phlx Remote Specialist" is defined in the proposed amendment as a Phlx Registered Specialist who is authorized by Phlx Rule 461 to conduct his/her regular specialist trading activities at remote locations off the floor of the Phlx.