

(ii) as to which the NYSE consents, the Commission will:

(A) By order approve the 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 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 NYSE. All submissions should refer to File No. SR-NYSE-2002-37 and should be submitted by October 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated Authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-24754 Filed 9-27-02; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46531; File No. SR-Phlx-2002-47]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Increasing the Maximum Guaranteed AUTO-X Size in Options on the Nasdaq-100 Index Tracking Stock ("QQQ") to 2,000 Contracts in the First Two Near-Term Expiration Months

September 23, 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 August 29, 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. 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>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change 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 to provide that, with respect to options in the QQQs, orders of up to 2,000 contracts in the first two near-term expiration months and orders of up to 1,000 contracts for all other expiration months, would be eligible for automatic execution on the Exchange's automatic execution system ("AUTO-X"), which is part of the Exchange's Automated Options 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, orders of up to 1000 contracts in QQQ options are eligible for execution through AUTO-X.<sup>4</sup>

Below is the text of the proposed rule change. Proposed new language is *italicized*.

\* \* \* \* \*

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

(a)-(b) No change.

(c) AUTO-X is a feature of AUTOM that automatically executes eligible 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 (except if executed pursuant to the NBBO Feature in sub-paragraph (i) below) 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, such as pursuant to sub-paragraph (iv) below. 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. Any such restriction on the use of AUTO-X approved by the Options Committee will be clearly communicated to Exchange membership and AUTOM users through an electronic message sent via AUTOM and through an Exchange information circular. Such restriction would not take effect until after such communication has been made. Currently, orders up to 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")<sup>SM</sup>, orders of up to 2,000 contracts in the first two (2) near term expiration months, and 1,000 contracts for all other expiration months, 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.

\* \* \* \* \*

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

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> See Securities Exchange Act Release No. 46307 (August 2, 2002), 67 FR 52508 (August 12, 2002) (File No. SR-Phlx-2002-43).

## 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 eligibility for AUTO-X in the first two near-term expiration months in QQQ options to 2,000 contracts<sup>5</sup> to match the size of orders in the same options eligible for automatic execution on another options exchange.<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 notes that the American Stock Exchange LLC ("Amex") allows automatic executions in QQQ options for a size of up to 2,000 contracts in series in the two near-term expiration months, and up to 1,000 contracts in all other expiration months. See Amex Rule 933, Commentary .02. See also Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002) (File No. SR-Amex-2002-30).

<sup>5</sup> Currently, the maximum option order size eligible for automatic execution via AUTO-X is 1,000 for QQQ options. *Id.*

<sup>6</sup> Exchange Rule 1080(c) provides that 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.

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

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 for eligible orders in QQQ options to 2,000 contracts for the first two near-term expiration months should provide the benefits of automatic execution to a larger number of customer orders. Further, the Exchange notes that this increase in automatic execution levels in QQQ options should enable the Exchange to remain competitive for order flow with other exchanges that trade QQQ options.

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>8</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 for QQQ options in the first two near-term expiration months does not prevent an ROT from declining to participate on the Wheel.<sup>9</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 2,000 contracts in the first two near-term expiration months.

The Exchange also has procedures that permit a specialist to disengage AUTO-X in extraordinary circumstances.<sup>10</sup> AUTOM users are notified of such circumstances.

<sup>8</sup> Unlike ROTs, specialists are required to participate on the Wheel. See Phlx Rule 1080(g).

<sup>9</sup> See Exchange Options Floor Procedure Advice F-24(e)(i).

<sup>10</sup> See Phlx Rule 1080(e). The Exchange has amended its rules 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). See Securities Exchange Act Release No. 45928 (May 15, 2002), 67 FR 36059

With respect to financial responsibility issues, the Exchange notes that it has a minimum net capital requirement respecting ROTs.<sup>11</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 QQQ options orders as large as 2,000 contracts in the first two near-term expiration months.

The Exchange believes that the increase in order size eligibility for AUTO-X orders in QQQ options 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 in QQQ options should not impose a significant burden on the operation or capacity of the AUTOM System and will give the Exchange better means of competing with other options exchanges for order flow.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>13</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.

(May 22, 2002) (order approving File No. SR-Phlx-2001-27).

<sup>11</sup> See Phlx Rule 703.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

*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>14</sup> of the Act and Rule 19b-4(f)(6)<sup>15</sup> thereunder.<sup>16</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 become operative immediately upon filing in order to remain competitive with other exchanges with similar rules in effect.<sup>17</sup>

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 August 29, 2002, to allow the Phlx to compete with another options exchange that currently has a maximum automatic execution eligibility limit in QQQ options of 2,000 contracts in the first two near-term expiration months.<sup>18</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.

**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 Phlx. All submissions should refer to File No. SR-Phlx-2002-47 and should be submitted by October 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**[USCG-1998-3584]**

**Proposed Modernization of the Coast Guard National Distress and Response System**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of availability of supplemental program environmental assessment.

**SUMMARY:** The U.S. Coast Guard announces the availability of the Supplemental Program Environmental Assessment for the National Distress and Response System Modernization Project (NDRSMP). The Supplemental PEA provides an update to and supplements environmental information to the Programmatic Environmental Assessment that was issued in July

1998. The Coast Guard is requesting comments on the alternatives and the potential environmental impacts as a result of NDRSMP.

**DATES:** Comments and related material must reach the Docket Management Facility on or before October 28, 2002.

**ADDRESSES:** To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-1998-3584), U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001.

(2) By delivery to Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Internet for the Docket Management System at <http://dms.dot.gov>.

In choosing among these means, please give due regard to recent difficulties and delays associated with delivery of mail through the U.S. Postal Service to Federal facilities.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as the Supplemental Program Environmental Assessment, will become part of this docket and will be available for inspection or copying at Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You may also find this docket, including the SPEA, on the Internet at <http://www.dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, the proposed project, or the associated Environmental Assessment, contact Ms. Donna M. Meyer, Environmental Program Manager, National Distress and Response System Modernization Project, U.S. Coast Guard Headquarters, 202-267-1496. For questions on viewing or submitting material to the docket, contact Ms. Dorothy Beard, Chief, Dockets, DOT, at 202-366-9329.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

Comments and related material on the Supplemental Program Environmental Assessment (SPEA) are encouraged. Please provide the name and address of

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</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>17</sup> See *supra* note 6.

<sup>18</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. <sup>15</sup> U.S.C. 78c(f).

<sup>19</sup> 17 CFR 200.30-3(a)(12).