

CBOE proposed certain "housekeeping" amendments to its Constitution and Rules.

The proposed rule change was published for comment in the **Federal Register** on October 2, 2002.³ The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange⁴ and, in particular, the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with the requirement of Section 6(b)(5)⁶ because it is designed to promote just and equitable principles of trade and to protect investors and the public interest by increasing public representation on the Exchange's Board and certain committees so that the Board and those committees will be balanced between industry (member) and public directors.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after notice of publication in the **Federal Register**, in light of the absence of adverse comments on the proposed rule change. Acceleration of this approval will permit the CBOE to implement the changes without delay.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-CBOE-2002-48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46706; File No. SR-Phlx-2002-52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend the PACE Price Improvement and Order Execution and Price Protection Pilot Programs Until March 31, 2003

October 22, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 26, 2002 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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 Exchange seeks to extend two PACE (Philadelphia Stock Exchange Automated Communication and Execution System)⁵ pilot programs that were introduced with the advent of decimal pricing in the securities industry.⁶ The first PACE pilot program, which is found in Supplementary Material .07(c)(i) to Rule 229, consists of an automated price improvement feature that incorporates a percentage of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6). The Exchange has requested, and the Commission agrees, to waive the pre-filing notice required by Rule 19b-4(f)(6).

⁵ PACE is the Exchange's automated order routing, delivery, execution and reporting system for equities.

⁶ The Exchange is extending both pilot programs pursuant to a telephone call on September 19, 2002, between Joseph Morra, Division of Market Regulation, Commission, and Jurij Trypupenko, Phlx. The Commission has noticed the Exchange's proposed rule change to make the pilot programs permanent, but has not yet approved the Exchange's request to make the pilot programs permanent. See Securities Exchange Act Release No. 45580 (March 18, 2002), 67 FR 13399 (March 22, 2002)(SR-Phlx-2002-18).

the spread between the bid and the offer (the "price improvement pilot program"). It has been in effect since January 30, 2001.⁷

The second PACE pilot program, which is found in Supplementary Material .05 and .07(c)(ii) to Rule 229, incorporates immediate execution of certain market orders through the Public Order Exposure System ("POES") and mandatory double-up/double-down price protection (the "order execution and price protection pilot program"). It has been in effect since August 25, 2000.⁸

The Exchange is not making any substantive changes to the price improvement or the order execution and price protection pilot programs that have previously been authorized by the Commission, with the exception of amending language that indicates that the pilot programs are extended through March 31, 2003.⁹

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

⁷ The price improvement pilot program was established in SR-Phlx-2001-12. See Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001). It was extended several times, currently through September 30, 2002. See Securities Exchange Act Release Nos. 44672 (August 9, 2001), 66 FR 43285 (August 17, 2001)(SR-Phlx-2001-67); 45078 (November 19, 2001), 66 FR 59293 (November 27, 2001) (SR-Phlx-2001-101); 45284 (January 15, 2002), 67 FR 3253 (January 23, 2002)(SR-Phlx-2002-01); and 45889 (May 7, 2002), 67 FR 32076 (May 13, 2002) (SR-Phlx-2002-28).

⁸ The order execution and price protection pilot program was established in SR-Phlx-00-08. See Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000). It was extended several times, currently through September 30, 2002. See Securities Exchange Act Release Nos. 44185 (April 16, 2001), 66 FR 20511 (April 23, 2001)(SR-Phlx-2001-20); 44818 (September 19, 2001), 66 FR 49240 (September 26, 2001)(SR-Phlx-2001-81); 45079 (November 19, 2001), 66 FR 59292 (November 27, 2001)(SR-Phlx-2001-102); 45295 (January 16, 2002), 67 FR 3624 (January 24, 2002) (SR-Phlx-2002-03); and 45889 (May 7, 2002), 67 FR 32076 (May 13, 2002)(SR-Phlx-2002-28).

⁹ Any proposed language changes other than the new date of extension are technical, non-substantive amendments to conform the language of the pilots and clarify that trading is in decimals only and the extension date applies to both pilots. The text of the proposed rule change is available at the Exchange and at the Commission.

³ See Securities Exchange Act Release No. 46546 (September 24, 2002), 67 FR 61934.

⁴ In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend two PACE pilot programs—the Exchange's price improvement pilot program and the Exchange's order execution and price protection pilot program.¹⁰

Price Improvement Pilot Program. Price improvement statistics are often used by order floor providers as a measure of both a specialist's and an Exchange's execution quality. Broker-dealers are subject to the fiduciary duty of best execution respecting their order routing decisions. The Exchange has long sought to encourage the development of features, and specialist participation in such features, that contribute to higher price improvement figures and thus encourage better execution quality for the Exchange. The automatic price improvement pilot based on a percentage of the spread between the bid and offer is intended to, and has enabled, price improvement greater than one penny.¹¹

The automatic price improvement pilot program is found in Supplementary Material .07(c)(i) to Rule 229, such that, for equities trading on the PACE System, the price improvement feature automatically executes eligible orders at a price better than the PACE Quote. A specialist may choose to provide automatic price improvement in the form of a percentage of the PACE Quote when an order is received, up to 50%, rounded to the nearest penny. This "percentage price improvement" feature would be available where the PACE Quote is \$.02 or greater, in a particular security to all customers. For example, where the PACE Quote is \$10.00–\$10.50 (a spread of \$.50), a specialist electing this feature and choosing a percentage of 30 would provide automatic price improvement of \$.15 to an eligible PACE order; thus, an incoming eligible sell order would receive an execution price of \$10.15,

whereas, absent automatic price improvement, it would be automatically executed at \$10.00. If the specialist in this example chooses a percentage of 25, the resulting \$.125 (12½ cents) would be rounded down to 12 cents.

Although participation in automatic price improvement (as well as PACE as a whole) is voluntary, the order execution and price protection pilot program requires that if specialists do not provide automatic price improvement, in certain situations they must manually provide double-up/double-down price protection.

Order Execution and Price Protection Pilot Program. The order execution portion of the pilot program is found in Supplementary Material .05 to Rule 229, which establishes that market orders up to a specified number of shares will be "stopped" at the PACE Quote at time of entry into the system and delayed up to thirty seconds to allow for price improvement. However, if the PACE Quote at time of order entry reflects a point spread (the difference between the best bid and offer) of \$.05 or less, that order will be executed immediately.

The double-up/double-down price protection portion of the pilot program is found in Supplementary Material .07(c)(ii) to Rule 229, which establishes that if a specialist chooses not to provide automatic price improvement to all customers and all eligible market orders in an equity trading on the PACE System, the specialist has to provide manual double-up/double-down price protection in any instance where the bid/ask of the PACE Quote is \$.05 or greater. Double-up/double-down is defined in Supplementary Material .07(c)(ii) as a trade that would be at least \$.10 (up or down) from the last regular way sale on the primary market, or, \$.10 from the regular way sale that was the previous intra-day change on the primary market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,¹² in general, and furthers the objectives of section 6(b)(5),¹³ in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by extending the pilot programs that provide for automatic price improvement and automatic execution of certain market orders and mandatory double-up/

double-down price protection for equities traded over the PACE System.¹⁴

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

The Exchange does not believe that the proposed rule change 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

The Exchange did not receive any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6)¹⁶ thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act,¹⁷ the Commission may summarily abrogate the 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.

The Exchange has requested that the Commission waive the 30-day operative date. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will permit the Exchange to continue the existing pilot programs without delay. Thus, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹⁸ of the Act and subparagraph (f)(6) of Rule 19b-4.¹⁹ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

¹⁰ See Securities Exchange Act Release Nos. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001) (SR-Phlx-2001-12) and 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000) (SR-Phlx-00-08).

¹¹ Prior to the automatic price improvement pilot program, specialists could choose to provide automatic price improvement of \$.01 for equities trading on the PACE System (where the PACE Quote—the NBBO—was either \$.05 or greater, or \$.03 or greater). See Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000) (SR-Phlx-00-08).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 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).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4.

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR-Phlx-2002-52 and should be submitted by November 20, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²⁰

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG-2002-13582]

National Preparedness for Response Exercise Program (PREP)

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for public comments on PREP triennial exercise schedule for 2003, 2004, and 2005.

SUMMARY: The Coast Guard, the Research and Special Programs Administration, the Environmental Protection Agency and the Minerals Management Service, in concert with representatives from various State governments, industry, environmental interest groups, and the general public, developed the Preparedness for

Response Exercise Program (PREP) Guidelines to reflect the consensus agreement of the entire oil spill response community. This notice announces the PREP triennial cycle, 2003-2005, requests comments from the public, and requests industry participants to volunteer for scheduled PREP Area exercises.

DATES: Comments and related material must reach the Docket Management Facility on or before December 30, 2002.

ADDRESSES: To make sure that 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-2002-13582), 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 Web Site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, 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 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, or need general information regarding the PREP Program and the schedule, contact Mr. Robert Pond, Office of Response, Plans and Preparedness Division (G-MOR-2), U.S. Coast Guard Headquarters, telephone 202-267-6603, fax 202-267-4065 or e-mail rpond@comdt.uscg.mil. If you have questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

SUPPLEMENTARY INFORMATION: The PREP Area exercise schedule and exercise design manuals are available on the Internet at <http://www.uscg.mil/hq/nsfcc/nsfweb/>. To obtain a hard copy of the exercise design manual, contact Ms. Melanie Barber at the Research and

Special Programs Administration, Office of Pipeline Safety, at 202-366-4560. The 2002 PREP Guidelines booklet is available at no cost on the Internet at <http://www.uscg.mil/hq/nsfcc/nsfweb/> or by writing or faxing the TASC DEPT Warehouse, 33141Q 75th Avenue, Landover, MD 20785, facsimile: 301-386-5394. The stock number of the manual is USCG-X0241. Please indicate the quantity when ordering. Quantities are limited to 10 per order.

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number [USCG-2002-13582], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this triennial exercise schedule in view of them.

Background and Purpose

In 1994, the Coast Guard (USCG) and the Research and Special Programs Administration (RSPA) of the Department of Transportation, the U.S. Environmental Protection Agency (U.S. EPA), and the Minerals Management Service (MMS) of the Department of Interior, coordinated the development of the National Preparedness for Response Exercise Program (PREP) Guidelines to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements (33 U.S.C. 1321(j)). The guiding principles for PREP distinguish between internal and external exercises. Internal exercises are conducted within the plan holder's organization. External exercises extend beyond the plan holder's organization to involve other members of the response community. External exercises are separated into two categories: (1) Area exercises, and (2) Government-initiated unannounced exercises. These exercises are designed to evaluate the entire response

²⁰ 17 CFR 200.30-3(a)(12).