

originally adopted in 1985,³ and has not been revised since it was first introduced. The Exchange believes that it is appropriate at this time to increase the amounts of certain of the fines that may be imposed pursuant to NYSE Rule 476A to ensure that the fine program for minor rule violations continues to be a meaningful deterrent to violative behavior.

The NYSE is proposing to amend NYSE Rule 476A to establish only two levels of fines for member organizations by raising the first time fine for member organizations to \$2,500, and all subsequent fines to \$5,000. For individuals, the first fine would be \$1,000, the second fine would be \$2,500, and subsequent fines would be \$5,000.

The proposed schedule is as follows:

Fine amount	Individual
First Time Fined	\$1000
Second Time Fined**	2500
Subsequent Fines**	5000

Fine amount	Member organization
First Time Fined	2,500
Subsequent Fines**	5,000

** Within a "rolling" 12-month period

The NYSE notes that the procedures authorized by NYSE Rule 476A are not mandatory. Under the rule, the Exchange may, in any case where it does not consider the rule violation to be minor, proceed to bring charges and commence a formal disciplinary proceeding under NYSE Rule 476.

2. Statutory Basis

The NYSE believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁴ that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The NYSE further believes that the proposed rule will also advance the objectives of Section 6(b)(6)⁵ of the Act in that it will permit Exchange members and persons associated with members to be "appropriately disciplined" for violation of Exchange rules. In addition, the Exchange believes that it also

supports Section 6(b)(7)⁶ of the Act in that it provides a fair procedure for the disciplining of members and persons associated with members. Finally, the Exchange believes that it also advances the objectives of Section 6(b)(1)⁷ of the Act in that it allows the Exchange to enforce compliance with its rules by its members and persons associated with members.

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 that is not necessary or appropriate 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 Exchange 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 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 NYSE. All submissions should refer to file number SR-NYSE-2003-13 and should be submitted by July 2, 2003.

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

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47992; File No. SR-NYSE-2003-19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend the Implementation Date To Establish a Six-Month Pilot Program Permitting a Floor Broker To Use an Exchange Authorized and Provided Portable Telephone on the Exchange Floor

June 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on May 27, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 proposes to extend the implementation date for the six-month pilot program that would permit a Floor broker to use an Exchange authorized and provided portable telephone on the Exchange Floor to begin no later than June 23, 2003, instead of on or about May 1, 2003, as originally adopted with the approval of SR-NYSE-2002-11.³

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 47671 (April 11, 2003), 68 FR 19048 (April 17, 2003) ("Original Order").

³ See Securities Exchange Act Release No. 22415 (Sept. 17, 1985), 50 FR 38600 (Sept. 23, 1985) (SR-NYSE-84-27).

⁴ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78f(b)(6).

⁶ 15 U.S.C. 78f(b)(7).

⁷ 15 U.S.C. 78f(b)(1).

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

In the Original Order, the Commission approved the Exchange's amendment to NYSE Rule 36 to permit a Floor broker to use an Exchange authorized and provided portable telephone on the Floor to be implemented as a six-month pilot beginning on or about May 1, 2003. The Exchange also committed in the Original Order to complete a study of communications on the Exchange Floor within three months of implementation of the portable telephone pilot program, which would have been on or about August 1, 2003.⁴ In addition, the Exchange committed to notify the Commission's Office of Compliance, Inspections & Examinations ("OCIE"), the Division of Market Regulation ("Division"), and the Exchange's membership within one week prior to the actual implementation date.

The Exchanges states that the implementation date in the Original Order (on or about May 1, 2003) was delayed pending the finalization of several contract issues with the provider of portable phone service. The Exchange now proposes to implement the six-month pilot program no later than June 23, 2003, with a commitment to complete the above-mentioned study no later than September 23, 2003. In addition, the Exchange reiterates its commitment to notify the Commission's OCIE, the Division, and the Exchange's membership one week prior to the actual implementation date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5)

of the Act⁶ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, 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 burden on competition that is not necessary or appropriate 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the 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, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸ 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.

The Exchange requests that the Commission waive the 30-day delayed operative date of Rule 19b-4(f)(6)(iii).⁹ The Exchange believes that waiver of this period will allow the Exchange to immediately implement the use of Exchange authorized and provided portable telephones on the Floor.

The Commission believes that it is consistent with the protection of

investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective.¹⁰ The Commission believes that the waiver of the 30-day operative delay will allow the NYSE to immediately notify the public of the general timeframe to implement its proposal to allow Exchange provided and authorized portable telephones on the Floor, consistent with the protection of investors and the public interest.¹¹

The Commission also reiterates its expectation from the Original Order that the NYSE complete, within three months of implementation of the portable telephones, a study of communications on the Exchange Floor, pursuant to a recommendation of an Independent Consultant retained by the Exchange,¹² and to provide notice to NYSE members, the Division, and OCIE one week prior to the pilot program's implementation. In addition to the study, the Commission, as noted in the Original Order, requests that the Exchange report any problems, surveillance or enforcement matters associated with the Floor brokers' use of an Exchange authorized and provided portable telephone on the Floor. If the NYSE decides to request permanent approval or an extension of the pilot, we would expect, in addition to the report due in three months, that the NYSE submit information documenting the usage of the phones, any problems that have occurred, and any advantages or disadvantages that have resulted.¹³

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

¹⁰ For purposes of only 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).

¹¹ As previously stated in the Original Order, the Commission notes that should the NYSE be unable to implement the filing by June 23, 2003, it would have to submit a rule proposal under Section 19(b) of the Act to change the date.

¹² See *In the Matter of New York Stock Exchange*, 70 S.E.C. Docket 106, Release No. 41574, 1999 WL 430863 (June 29, 1999).

¹³ This information along with any proposal to extend, or permanently approve, the pilot should be submitted at least two to three months prior to the expiration of the six-month pilot.

⁴ See *infra* note 12.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6)(iii).

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-2003-19 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47977; File No. SR-Phlx-2003-37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Delete the Prohibition Against the Delivery of Electronically Generated Orders Via AUTOM

June 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on May 19, 2003, 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 Phlx. 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 proposes to delete Phlx Rule 1080(i), which prohibits the delivery of electronically generated orders delivered via AUTOM.³ The text

of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

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 purpose of the proposed rule change is to enable the Exchange to compete for order flow by allowing electronically generated orders to be delivered via AUTOM.

In September 2000, the Exchange adopted Phlx Rule 1080(i), which restricts the entry of certain options orders that are created and communicated electronically, without manual input, into AUTOM.⁴ At the time, the Exchange represented that allowing electronically generated and communicated customer orders to be routed directly to AUTOM and AUTO-X would give customers with such electronic systems a significant advantage over Exchange specialists and Registered Options Traders ("ROT's"), who are responsible for the maintenance of fair and orderly markets on the Exchange, and who provide liquidity on the Exchange.

Since the time the Exchange adopted Phlx Rule 1080(i), the Exchange has modified its AUTOM and AUTO-X system in several significant respects. For example, in September and October 2002, the Exchange incorporated a new software program into its Auto-Quote⁵

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.

⁴ See Securities Exchange Act Release No. 43376 (September 28, 2000), 65 FR 59488 (October 5, 2000) (SR-Phlx-00-79).

⁵ Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to

system that enables the Exchange to disseminate a firm quotation size of at least the sum of limit orders at the Exchange's disseminated price.⁶ The Exchange has also expanded the eligible order types⁷ and delivery sizes⁸ eligible for AUTOM delivery and automatic execution via AUTO-X.

Based on the significant changes to the Exchange's AUTOM System since the time the Exchange adopted Phlx Rule 1080(i), the Exchange believes that it has developed systems that have narrowed the gap with respect to any actual or perceived advantage an off-floor customer or broker-dealer could have over a specialist or ROT in sending electronically generated orders to the Exchange via AUTOM. The Exchange represents that it will continue to surveil for, and enforce, compliance with other rules that help specialists and ROTs in managing their risk while making markets on the Exchange.⁹

automatically monitor and instantly update quotations. Specialists may submit their own quotations by establishing a specialized connection by-passing the Exchange's Auto-Quote system, which is known as a Specialized Quote Feed ("SQF").

⁶ See Securities Exchange Act Release No. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002), (SR-Phlx-2002-15).

⁷ In October 2002, the Commission permanently approved an Exchange pilot that allowed orders for the account(s) of broker-dealers to be delivered via AUTOM, and to be eligible for automatic execution via AUTO-X. See Securities Exchange Act Release No. 46660 (October 15, 2002), 67 FR 64951 (October 22, 2002) (SR-Phlx-2002-50). The Exchange then adopted rules providing for automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum eligible size range to be determined by the specialist, on an issue-by-issue basis. See Securities Exchange Act Release No. 46886 (November 22, 2002), 67 FR 72015 (December 3, 2002) (SR-Phlx-2002-39). Most recently, the Exchange adopted rules providing an equal firm quotation size and equal AUTO-X guaranteed size for both customer and broker-dealer orders. See Securities Exchange Act Release No. 47646 (April 8, 2003), 68 FR 17976 (April 14, 2003) (SR-Phlx-2003-18).

⁸ In March 2003, the Exchange adopted rules to increase the eligible AUTOM order delivery size for off-floor broker dealer orders from 200 contracts to 1,000 contracts for all options. At the same time, the Exchange determined to allow the delivery Immediate or Cancel orders via AUTOM. See Securities Exchange Act Release No. 47543 (March 20, 2003), 68 FR 14737 (March 26, 2003) (SR-Phlx-2003-11).

⁹ For example, the Exchange will continue to surveil for, and enforce, compliance with Phlx Rule 1080(c)(ii), which sets forth the obligations of an Exchange Order Entry Firm, defined as a member organization of the Exchange that is able to route orders to AUTOM, and a User, defined as any person or firm that obtains access to AUTO-X through an Order Entry Firm. Specifically, the rule requires Order Entry Firms to comply with all applicable Exchange options trading rules and procedures; provide written notice to all Users regarding the proper use of AUTO-X; and neither enter nor permit the entry of multiple orders in call options and/or put options in the same option issue within any 15-second period for an account or accounts of the same beneficial owner.

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ AUTOM is the Exchange's electronic option order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to