to be in the best interest of investors.[6] While Article VI, Section 4(a)(2) as currently drafted is also broad, OCC believes that its authority should be expressed in language parallel to other By-Laws provisions that expressly acknowledge that a settlement price may be fixed based either on the last reported price before a market disruption or the next reported price following the disruption or by some other method.

As with index options, under revised Article XVI, Section 4(a)(2) the settlement value of yield-based Treasury options will be fixed by an adjustment panel consisting of representatives of the exchange or exchanges on which the affected series of options is traded. Also, under revised Section 4(a)(3), in the event the adjustment panel delays fixing a settlement value beyond the expiration date of the affected series, the normal exercise by exception procedures will not apply. Instead, options that are in the money by one dollar or more would be deemed to have been irrevocably exercised prior to the expiration time.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act, as amended, because it is designed to promote the prompt and accurate clearance and settlement of securities transactions, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, remove impediments to the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest. The proposed changes promote these objectives by providing OCC with flexibility in responding to unanticipated events.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote prompt and accurate clearance and settlement of securities transactions.[7] The proposed rule change will allow OCC to make an adjustment to the multiplier of yield-based Treasury options in coordination with such an adjustment by an exchange and more clearly defines the method OCC will use to make a settlement adjustment for yield-based Treasury options in the event the settlement value is not

available. By aligning OCC's rules for yield-based Treasury option rules with OCC's rules for index options, which have been previously approved by the Commission, the proposed rule change is designed to add uniformity and certainty to OCC's rules and therefore should help to promote prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2004–11) be and hereby is approved.

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

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. E4–3862 Filed 12–28–04; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50911; File No. SR–Phlx–2004–89]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Changes to Its Automated Options Market (AUTOM) System

December 22, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 14, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Phlx. On December 17, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposal, as amended, as a "non-controversial" proposed rule change

pursuant to section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(6) thereunder.[5] 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 Exchange Rule 1080(c)(iii), to reflect changes to the Exchange's Book Sweep function, and Exchange Rule 1080(c)(iv), which sets forth various situations in which orders received over the Philadelphia Stock Exchange Automated Options Market ("AUTOM") System[6] that would otherwise be eligible for automatic execution are instead handled manually by the specialist, to reflect that All-or-None ("AON") Orders would now be eligible for automatic execution.

Below is the text of the proposed rule change. Proposed additions are *italicized;* proposed deletions are [bracketed].

*   *   *   *   *

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

(a)–(b) No change.
(c) AUTO–X. * * *
(i)–(ii) No change.
(iii) *Quotations Interacting With Limit Orders on the Book.* [Book Sweep. Book Sweep is a feature of AUTOM which, when engaged, does the following:]

(A) Respecting non-Streaming Quote Options, when [the] *a* bid or offer *that is: (1)* Generated by the Exchange's Auto-Quote system (or by a proprietary quoting system provided for in Commentary .0[2]*1(b)* of this Rule called "Specialized Quote Feed" or "SQF"*); and (2) priced at the National Best Bid or Offer ("NBBO"), and therefore would result in an execution at the NBBO (a "Book Sweep Quote"),* matches or crosses the Exchange's best bid or offer in a particular series as established by

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[6] Securities Exchange Act Release No. 46561 (September 26, 2002), 67 FR 61943 (October 2, 2002) [File No. SR–OCC–2002–09].

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated December 17, 2004 ("Amendment No. 1"). Amendment No. 1 replaces the original filing in its entirety.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

[6] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange's trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution features, AUTO–X, Book Sweep and Book Match. 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 limit order book on the Exchange trading floor. *See* Exchange Rule 1080.

an order on the limit order book, orders on the limit order book in that series will be automatically executed and allocated among crowd participants signed onto the Wheel. *This feature of AUTOM is known as "Book Sweep."* If Book Sweep is not engaged at the time the [Auto-Quote or SQF bid or offer] *Book Sweep Quote* matches or crosses the Exchange's best bid or offer represented by a limit order on the book, the specialist may manually initiated the Book Sweep feature. Book Sweep shall be engaged when AUTO–X is engaged, and shall be disengaged when AUTO–X is disengaged in accordance with Rule 1080(c)(iv) and Rule 1080(e). Eligible orders on the limit order book will be automatically executed up to the size associated with the quote that matches or crosses such limit orders.

(B) Respecting Streaming Quote Options, when [the] *any* bid or offer generated by the Exchange's Auto-Quote system, SQF, or by an SQT (as defined in Rule 1014(b)(ii)) matches or crosses the Exchange's best bid or offer in a particular series as established by an order on the limit order book, orders on the limit order book in that series will be automatically executed and automatically allocated in accordance with Exchange rules. If Book Sweep is not engaged at the time the Auto-Quote, SQF, or SQT bid or offer matches or crosses the Exchange's best bid or offer represented by a limit order on the book, the specialist or SQT may manually initiate the Book Sweep feature.

(iv) Except as otherwise provided in this Rule, in the following circumstances, an order otherwise eligible for [AUTO–X] *automatic execution* will instead be manually handled by the specialist:

(A) the Exchange's disseminated market is crossed (*i.e.,* 2⅛ bid, 2 offer), or crosses the disseminated market of another options exchange;

(B) [all-or-none order;

(C)] the AUTOM System is not open for trading when the order is received (which is known as a pre-market order);

([D]*C*) the disseminated market is produced during an opening or other rotation;

([E]*D*) when the specialist posts a bid or offer that is better than the specialist's own bid or offer (except with respect to orders eligible for *"Book Sweep"* as described in Rule 1080(c)(iii) *above, and* "Book Match" as described in Rule 1080(g)(ii) below);

([F]*E*) if the Exchange's bid or offer is not the NBBO;

([G]*F*) when the price of a limit order is not in the appropriate minimum

trading increment pursuant to Rule 1034;

([H]*G*) when the bid price is zero respecting sell orders; and

([I]*H*) respecting non-Streaming Quote Options, when the number of contracts automatically executed within a 15 second period in an option (subject to a Pilot program through April 30, 2005) exceeds the specified disengagement size, a 30-second period ensues during which subsequent orders are handled manually. If the Exchange's disseminated size exceeds the specified disengagement size and an eligible order is delivered for a number of contracts that is greater than the specified disengagement size, such an order will be automatically executed up to the disseminated size, followed by an AUTO-X disengagement period of 30 seconds. If the specialist revises the quotation in such an option prior to the expiration of such 30-second period, eligible orders in such an option shall again be executed automatically.

The Exchange's systems are designed and programmed to identify the conditions that cause inbound orders to be ineligible for automatic execution. Once it is established that inbound orders are ineligible for automatic execution, Exchange staff has the ability to determine which of the above conditions occurred.

(d)–(k) 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 purpose of the proposed rule change is to amend Exchange Rules 1080(c)(iii) and (iv) to reflect system changes to AUTOM that are intended to increase the number of orders that are handled and executed automatically on the Exchange. The purpose of Amendment No. 1 to the proposed rule

change is to clarify the description of the functionality of the Book Sweep feature.

Book Sweep Functionality

The Exchange proposes to amend Exchange Rule 1080(c)(iii) to reflect an additional automated execution functionality of its "Book Sweep" feature of AUTOM. Book Sweep is a feature of AUTOM that automatically executes inbound quotations against limit orders resting on the limit order book under certain circumstances. The Book Sweep feature automates this process when Book Sweep is engaged, and the Exchange's disseminated price is a limit order on the limit order book priced at the National Best Bid or Offer ("NBBO").

Currently, respecting options that are not traded on the Exchange's electronic trading platform for options, Phlx XL[7] (referred to as "non-Streaming Quote Options"), when a quote in a particular option series that is generated by the Exchange's Auto-Quote feature of the AUTOM system[8] or by a proprietary quoting system called "Specialized Quote Feed" or "SQF"[9] matches or crosses a limit order resting on the limit order book when the price of such limit order is the NBBO, the limit order is automatically executed and allocated on the Exchange's "Wheel."[10]

The proposed amendments to Exchange Rule 1080(c)(iii)(A) would clarify that, respecting non-Streaming Quote Options, when a bid or offer that is: (1) Generated by the Exchange's Auto-Quote system or SQF; and (2) priced at the NBBO, and therefore would result in an execution at the NBBO (a "Book Sweep Quote"), matches or crosses the Exchange's best bid or offer in a particular series as established by an order on the limit order book, orders on the limit order book in that series will be automatically executed and allocated among crowd participants signed onto the Wheel.

Current Exchange Rule 1080(c)(iv)(E), which is proposed to be redesignated as Exchange Rule 1080(c)(iv)(D), provides that orders otherwise eligible for automatic execution are instead handled manually by the specialist when the specialist posts a bid or offer that is better than the specialist's own bid or offer (*i.e.,* a limit order on the book). The Exchange believes that the purpose of

[7] *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59).

[8] *See* Exchange Rule 1080, Commentary .01(a).

[9] *See* Exchange Rule 1080, Commentary .01(b)(i).

[10] *See* Exchange Rule 1080(g) and Option Floor Procedure Advices and Order and Decorum Regulations F–24.

the rule is to allow the specialist to handle the booked limit order manually, and to seek the best execution on behalf of the limit order, when the quotation that matches or crosses the limit order price is not qualified as a ''Book Sweep Quote.'' The proposed rule change to current Exchange Rule 1080(c)(iv)(E) would clarify that orders eligible for Book Sweep would not be handled manually.

Currently, respecting Streaming Quote Options traded on Phlx XL (in which the specialist and a category of market-making Exchange participant known as a Streaming Quote Trader (''SQT'') [11] submit independent, proprietary electronic quotations), when a contra-side quotation that is not submitted with a message that indicates that the sender intends to sweep the book matches or crosses the price of a limit order resting on the limit order book, the specialist must execute and allocate the order manually to the participant that submitted the particular electronic quote. The proposal would provide that, when any electronic contra-side quotation matches with a limit order on the limit order book at the NBBO (*i.e.,* regardless of whether the quote is submitted with a message that indicates that the sender intends to sweep the book), the AUTOM System will automatically execute and allocate the resulting trade.[12] The Exchange believes that this enhanced automated functionality should increase the number of automatic executions of transactions in Streaming Quote Options, and should assist SQTs that submit electronic proprietary quotations in Streaming Quote Options by automatically executing transactions as contra-side to the limit order book in situations where the SQTs' quoting and trading systems do not include features that enable such SQTs to submit quotes with an indication that the sender intends to sweep the book.

In order to correct a typographical error in the current rule text, the Exchange proposes to amend Exchange Rule 1080(c)(iii)(A) to reflect that the Exchange Rule that describes SQF is Commentary .01(b) to Exchange Rule 1080.

Automatic Execution of AON Orders

Currently, under the Exchange Rule 1080(c)(iv)(B), AON Orders [13] are not

eligible for automatic execution and are instead handled manually by the specialist. The Exchange proposes to amend the rule to delete this provision. Therefore, when the Exchange's disseminated price is the NBBO, AON Orders, when they become due for execution when their price and size can be executed in full, would be executed and allocated automatically by the AUTOM System. Under this proposed system enhancement, AON Orders, if eligible for execution based on the price and size of the inbound contra-side quote or order, would be executed in order of priority based on the time the AON Order was received. If the inbound quote or order at the disseminated price is not of sufficient size to execute the resting AON Order in full, such resting AON Order would not be executed, and would remain on the limit order book until it is eligible for execution based on the price and size of the inbound quote or order, or canceled. The Exchange represents that this system change is intended to automate more executions on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act [14] in general, and furthers the objectives of section 6(b)(5) of the Act [15] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest, by adopting changes to the AUTOM System that result in a greater number of orders that are handled and executed automatically.

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.

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 rule 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 it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17] 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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposed of the Act.[18]

The Exchange requests that the Commission waive the five business days pre-filing requirement and the 30-day operative delay under Rule 19b–4(f)(6)(iii).[19]

The Commission believes that the waiver of the five business days pre-filing requirement and the 30-day operative delay under Rule 19b–4(f)(6)(iii) is consistent with the protection of investors and the public interest, because the proposed rule change will increase the number of orders that are handled and executed automatically on the Exchange and should facilitate more efficient and immediate executions.[20] Accordingly, the Commission designates that the proposal shall become operative as of the date of this notice.

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. Comments may be submitted by any of the following methods:

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[11] *See* Exchange Rule 1014(b)(ii)(A).

[12] *See* Exchange Rule 1014(g)(vii) for a description of the allocation algorithm applicable to trades in Streaming Quote Options that are automatically executed.

[13] An AON Order is a market or limit order which is to be executed in its entirety or not at all. *See* Exchange Rule 1066(c)(4).

[14] 15 U.S.C. 78f(b)

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 17, 2004, the date the Exchange filed Amendment No. 1 to the proposed rule change. *See* 15 U.S.C. 78s(b)(3)(C).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2004–89 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submissions, 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 the filing also will be available for inspection and copying at the principal office of the Phlx.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–89 and should be submitted on or before January 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–28479 Filed 12–28–04; 8:45 am]

BILLING CODE 8010–01–M

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[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50901; File No. SR–Phlx–2004–84]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Eliminate the Public Order Exposure System Functionality From Phlx Rule 229

December 21, 2004.

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 November 26, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 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 Phlx proposes to eliminate the Public Order Exposure System ("POES") functionality from Phlx Rule 229. The text of amended Exchange Rule 229 is set forth below. Brackets indicate deletions; *italics* indicate additions.

*   *   *   *   *

Rule 229. Philadelphia Stock Exchange Automated Communication and Execution System (PACE)

Supplementary Material: * * *
.01—.04 No Change.
.05—[Public Order Exposure System—]Subject to Supplementary Material Section .07, all round-lot market orders up to 500 shares and PRL market orders up to 599 shares *entered after the opening will be automatically executed at the PACE Quote.* [Will be stopped at the PACE Quote at the time of entry into the system ("Stop Price") and be subject to a delay of up to 30 seconds from being executed in order to receive an opportunity for price improvement. If such market order is not executed within the 30 second window, the order will be automatically executed at the Stop Price. If the PACE Quote at the time of order entry into the system reflects a point spread (the difference between the best bid and offer) of $.05 or less for equities trading in decimals, pursuant to Rule 134 or

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[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

125, that order will be executed immediately without the 30 second delay.]
*   *   *
.06—No Change.
.07—(a)-(b) No Change.
(c) Price Improvement for PACE Orders.
(i) Automatic Price Improvement— Where the specialist voluntarily agrees to provide automatic price improvement to all customers and all eligible market orders in a security, automatically executable market and marketable limit orders in New York Stock Exchange and American Stock Exchange listed securities received through PACE for 599 shares or less shall be provided with automatic price improvement from the PACE Quote when received either $.01 or a percentage of the PACE Quote when the order is received for equities trading in decimals beginning at 9:30 A.M., except where:
(A) A buy order would be improved to a price less than the last sale (except as provided in ([F]*E*) below) or a sell order would be improved to a price higher than the last sale (except as provided in ([E]*D*) below); or
(B) A buy order would be improved to the last sale price which is a downtick (except as provided in ([F]*E* below) or a sell order would be improved to the last sale price which is an uptick (except as provided in ([E]*D*) below). The PACE System will determine whether the last sale price is a downtick or an uptick. The PACE System does not recognize changes from the previous day's close.

In these situations, the order is not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote. A specialist may voluntarily agree to provide automatic price improvement to larger orders in a particular security to all customers under this provision.

A specialist may choose to provide automatic price improvement of: (i) $.01 where the PACE Quote is either $.05 or greater, or $.03 or greater, or (ii) where the PACE Quote is $.02 or greater, a percentage of the PACE Quote when the order is received, up to 50%, rounded to the nearest penny, and at least $.01, in a particular security to all customers.
(C) Automatic price improvement will not occur for odd-lot orders, nor where the execution price before or after the application of automatic price improvement would be outside the primary market high/low range for the day, if so elected by the entering member organization.
(D) [The POES window of Supplementary Material .05 above does