

prior to the thirtieth day after publication of the notice of filing because accelerated approval will permit NSCC to begin making mutual fund orders from TPAs for their plans eligible for NSCC's mutual fund service immediately. Thus, NSCC will be able to respond promptly to the processing and operational constraints that are currently being experienced in this area.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. 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, 450 Fifth Street, NW., Washington DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR-NSCC-96-22 and should be submitted by May 27, 1997.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-96-22) be, and hereby, is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38544; File No. SR-Phlx-97-11]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 thereto by the Philadelphia Stock Exchange, Inc. Relating to PACE Execution Guarantees.

April 24, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on March 3, 1997, 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 self-regulatory organization. On April 4, 1997, the Phlx filed Amendment No. 1 to the proposal.<sup>1</sup> On April 21, 1997, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>2</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, pursuant to Rule 19b-4 of the Act, proposes to amend Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System (PACE), to amend the: (1) Execution guarantee applicable to PACE market<sup>3</sup> and marketable limit orders over 599 shares; (2) out-of-range protection provisions; (3) execution price for partial round lots; and (4) limit order provisions for clarity. First, the Exchange proposes to amend the execution guarantee applicable to orders greater than 599 shares.<sup>4</sup> Specifically,

<sup>1</sup> Amendment No. 1 makes several clarifying revisions to the proposal and corrects a typographical error. See Letter from Philip H. Becker, Senior Vice President, Chief Regulatory Officer, Phlx, to James T. McHale, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated April 3, 1997 ("Amendment No. 1").

<sup>2</sup> Amendment No. 2 clarifies the operation of the proposed rule change by revising the fourth example under the heading "Market orders." See letter from Philip H. Becker, Senior Vice President, Chief Regulatory Officer, Phlx, to James T. McHale, Attorney, OMS, Division, Commission, dated April 17, 1997 ("Amendment No. 2").

<sup>3</sup> Market orders are defined as orders to buy or sell a stated amount of a security at the best price obtainable after the order is represented on the Exchange.

<sup>4</sup> Consistent with the existing provisions of Supplementary material .05, if an order is for 599

where a specialist voluntarily agrees to automatically execute market or marketable limit orders greater than 599 shares, an order is automatically executable at the PACE Quote,<sup>5</sup> if it is: (a) Greater than 599 shares; (b) within the specialist's automatic execution guarantee; and (c) less than or equal to the size of the PACE Quote. Orders greater than the size of the PACE Quote are guaranteed either: (1) A manual execution at the PACE Quote price up to the size of the PACE Quote, with the balance of the order receiving a professional execution, in accordance with Rule 229.10(b) ("the First Guarantee"); or (ii) an automatic execution at the PACE Quote, up to the size of the order (within the specialist's execution guarantee size), regardless of the size of the PACE Quote ("the Second Guarantee").

The First Guarantee is applicable to all specialists who agree to accept orders greater than 599 shares. With respect to the portion of an order exceeding the size of the PACE Quote, such order shall receive a professional execution, meaning an execution consistent with prevailing market conditions, fair and orderly markets and other applicable Exchange rules; this language is proposed to be added to Supplementary Material .10(b). The Second Guarantee is applicable to orders greater than 599 shares and for which specialists have agreed to establish a guarantee for a security independent of the size of the PACE Quote. The First and Second execution guarantees are proposed to be added to Supplementary Material .05.

Second, the provisions respecting out-of-range executions also are being amended. Currently, pursuant to Supplementary Material .07(a), member organizations which enter market orders after the opening may elect to have such orders executed (i) In accordance with the procedures set forth in Supplementary Material .05, or (ii) if such execution price would be outside the New York market high-low range for the day, manually at or within the New York market high-low range of the day. This is referred to as out-of-range protection, a long-standing feature of the

shares or less, it will continue to be automatically executable at the PACE Quote, regardless of the size of the PACE Quote, as the Exchange is not amending the automatic execution guarantee applicable to orders for 599 shares or less.

<sup>5</sup> The PACE Quote is defined as the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific, or Philadelphia Stock Exchanges, or the Intermarket Trading System/Computer Assistant Execution System ("ITS/CAES") quote, as appropriate.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

PACE System.<sup>6</sup> At this time, the limitation to orders less than 599 shares in Supplementary Material .07(a) respecting market orders is proposed to be deleted, and a new provision applicable to limit orders is proposed to be adopted in Supplementary Material .10(a) to cover all sizes of limit orders. Currently, Supplementary Material .10(b) provides that orders executed under that paragraph will be executed at or within the primary market high-low range existing at the time of execution.

Third, the Exchange proposes to amend the provisions respecting the execution of partial round-lot orders. Currently, Supplementary Material .07(b) provides that, in the case of a partial round-lot order, the round-lot portion(s) of which is executed at more than one price, the odd-lot portion shall be executed at the same price as the last round-lot portion is executed. This provision is proposed to be amended to state that the execution should look back to the execution price of the first 100 shares. The same changes are proposed respecting Supplementary Material .09 and .10(b).

Lastly, the Exchange is also proposing to reorganize Rule 229 by separating marketable limit orders and otherwise clarifying Supplementary Material .10(a). Further, Supplementary Material .07(b) is proposed to be amended to reflect that orders exceeding a specialist's automatic execution guarantee may nevertheless be delivered through the PACE System. Currently, this provision states that market orders (round-lots of 600 to 1000 shares or such greater size which the specialist agrees to accept and partial round-lots of 601 to 1099 shares or such greater size which the specialist agrees to accept) which are entered after the opening shall not be subject to the execution parameters set forth in Rule 229 and shall be executed in accordance with other applicable rules of the Exchange. The proposal would clarify that this provision applies to orders which the specialist has not agreed to accept for automatic execution and are, instead, only delivered through the PACE System. The proposal would also codify that such orders are executable in accordance with Supplementary Material .10(b).

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

##### a. Background

The PACE System has served as the Exchange's automatic order routing and execution system for securities on the equity trading floor, providing certain execution guarantees. Initially, the PACE System was created to provide an efficient mechanism for the delivery of small customer orders, meaning up to 599 shares. Thereafter, PACE order size eligibility increased, automatic execution became a feature and the professional execution standard for orders greater than 600 shares was codified.<sup>7</sup> Pursuant to Supplementary Material .02, only agency orders are currently executed through PACE.<sup>8</sup> PACE orders are only eligible for execution after the primary market has opened.<sup>9</sup>

##### b. Market Orders

At this time, the Exchange is proposing to amend the execution guarantee applicable to market and marketable limit PACE orders over 599 shares. With respect to market orders, currently, Rule 229.05 provides that market orders are stopped at the PACE Quote at the time of entry into the system ("Stop Price") and subject to a delay of up to 15 seconds in order to receive an opportunity for price improvement. This feature is known as

the "Public Order Exposure System" or "POES." If such market order is not executed within the 15 second window, the order will be automatically executed at the Stop Price.<sup>10</sup>

Rule 229.05 further provides, that subject to these procedures, the specialist may voluntarily agree to execute market orders greater than 599 shares. Thus, market orders over 599 shares that a specialist voluntarily agrees to accept are currently entitled to the same execution at the PACE Quote, regardless of the size of the PACE Quote. These orders are also subject to POES.

The Exchange is proposing to adopt new language in Rule 229.05 to govern market orders over 599 shares that a specialist has agreed to automatically execute. The minimum execution guarantee for such orders, the First Guarantee, is proposed to be an automatic execution at the PACE Quote, up to the size of the PACE Quote. If the order size is greater than the size of the PACE Quote, the order shall manually receive an execution at the PACE Quote up to the size of the PACE Quote, with the balance of the order receiving a professional execution, in accordance with Supplementary Material .10(b). However, under the Second Guarantee, a specialist may agree to automatically execute orders greater than 599 shares that are also greater than the size of the PACE Quote in full at the PACE Quote (within the specialist's guarantee). The Exchange believes that although it is important to establish a minimum automatic execution guarantee, specialists should nevertheless be permitted, and encouraged, to voluntarily provide more favorable guarantees. The Exchange states that this belief is consistent with the rules and practices of other regional exchanges.<sup>11</sup>

A professional execution is described in Rule 229.10(b), listing specific circumstances and standards that apply. The Exchange is proposing to add the general standards that all orders subject to Supplementary Material .10(b) be executed consistent with prevailing market conditions, fair an orderly markets and other applicable rules of the Exchange. For instance, the rules of priority, parity and precedence apply to PACE orders, as do many other important trading rules.

The second paragraph of Rule 229.07 will continue to apply to market orders

<sup>7</sup> Securities Exchange Act Release Nos. 23630 (September 16, 1986) (SR-Phlx-86-30); and 25716 (May 16, 1988) (SR-Phlx-87-30).

<sup>8</sup> Securities Exchange Act Release Nos. 26968 (June 23, 1989) (SR-Phlx-89-13 defining agency orders); and 36442 (October 31, 1995) (SR-Phlx-95-32 permitting broker-dealer orders on PACE). Although approval for the delivery of broker-dealer orders through PACE was received, this feature is not currently utilized by broker-dealers.

<sup>9</sup> Securities Exchange Act Release No. 27596 (January 8, 1990) (SR-Phlx-89-15 at n.6). See also Chicago Stock Exchange, Incorporated ("CHX") Rules, Article XX, Rule 37(a)(4).

<sup>6</sup> See e.g., Securities Exchange Act Release No. 28629 (November 20, 1989) (SR-Phlx-90-19).

<sup>10</sup> If the PACE Quote at the time of order entry into the system reflects a  $\frac{1}{8}$  point spread between the best bid and offer, that order will be executed immediately without the 15 second delay.

<sup>11</sup> See e.g., CHX, Article XX, Rule 37(d).

greater than 599 shares where the specialist has *not* agreed to provide automatic executions. These PACE-delivered orders are not subject to the execution parameters set forth in Supplementary Material .05, but shall be executed in accordance with Supplementary Material .10(b) and other applicable rules of the Exchange.

The following is an example of how the proposal would operate, assuming the specialist has voluntarily agreed to provide an automatic execution guarantee for orders greater than 599 shares and thus would be required to provide at least the minimum guarantee (the First Guarantee). In this example, the PACE Quote bid is composed of 1,000 shares (Pacific Stock Exchange "PSE"), 500 shares (New York Stock Exchange "NYSE"), and 500 shares (CHX), for an aggregate total size<sup>12</sup> of 2,000 shares and the specialist's automatic execution guarantee is 2,500 shares.

(1) The specialist receives a market order to sell 1,000 shares. This order is equal to the size of the PACE Quote (single market PSE) bid (1,000 shares) and less than the specialist's automatic execution guarantee size of 2,500 shares, thus, is automatically executable.

(2) The specialist receives a market order to sell 1,100 shares. The order is greater than the PACE Quote bid size (PSE for 1,000 shares), and thus would revert to manual status, with the specialist obligated to fill 1,000 shares at the PACE Quote, and the remaining 100 shares entitled to a professional execution.

(3) The specialist receives a market order to sell 2,200 shares. Same result: the entire order would revert to manual status with the specialist obligated to fill 1,000 shares at the PACE Quote, and the balance of 1,200 shares receiving a professional execution.

(4) The specialist receives a market order to sell 3,000 shares. The order reverts to manual, because it exceeds the specialist's automatic execution guarantee, and the entire 3,000 share order receives a professional execution.<sup>13</sup> The fact that the aggregate size of the best bid is for 2,000 shares does not determine or affect the execution.

Assuming the specialist has voluntarily agreed to provide an

automatic execution guarantee for orders greater than 599 shares, the specialist may also determine to provide more than the minimum guarantee by guaranteeing an automatic execution at the PACE Quote to all orders within the specialist's guarantee size, regardless of the size of the PACE Quote (*i.e.* the Second Guarantee). For instance, where the specialist's automatic execution guarantee is 2,500 shares and the PACE Quote bid is composed of 1,000 shares (PSE), 500 shares (NYSE), and 500 shares (CHX), for an aggregate total size of 2,000 shares, a market order to sell 2,200 shares is received. This order is automatically executed at the PACE Quote, because it is less than the specialist's maximum size guarantee for automatic execution, despite the PACE Quote size being 1,000 shares.

In light of significant changes to the marketplace as well as the competitive environment, one purpose of this proposal is to update the PACE automatic execution guarantees. For instance, new SEC Rule 11Ac1-4 requires specialists and market makers to, under normal market conditions, display within 30 seconds the price and full size of customer limit orders better than or, where the specialist's quote is the PACE Quote, that enhance the size of the specialist's quote.<sup>14</sup> Other changes in the marketplace include the increase in third market trading, internalization, payment for order flow practices and the use of technology, as cited by the Commission both in the Adopting Release, as well as in the Market 2000 Study.<sup>15</sup>

The Exchange believes that the Display Rule may have a profound impact on the national market system, and may, for one, result in small bids and offers routinely comprising the PACE Quote. Although the Exchange understands the important purposes of the Display Rule cited by the Commission in the Adopting Release, the Exchange nevertheless believes that the resulting changes in displayed quote sizes may have a corresponding impact on the Exchange's PACE System and the automatic execution guarantees offered thereunder. The Commission has recognized that the new Rule may affect automatic execution guarantees.<sup>16</sup> As

described above, PACE execution guarantees do not currently take into account the size of the PACE Quote with respect to the execution of market and marketable limit orders. Specialists currently execute the excess size of an incoming PACE order over the PACE Quote size as principal. Thus, the purpose of this proposal is to establish a correlation between market size and PACE guarantee size.

Second, respecting the current competitive environment, the Exchange notes that other regional exchange automated order delivery and execution systems provide various types of execution guarantees. For market orders, most other regional exchange rules permit conditioning automatic execution at the PACE Quote on the displayed size of the PACE Quote. For instance, the Chicago Stock Exchange MAX System contemplates a contingency based on the size of the displayed PACE Quote.<sup>17</sup> Thus, the effect on the Exchange's proposal is to similarly consider the PACE Quote size for certain order sizes, consistent with other systems.

The Exchange is also proposing to amend the out-of-range guarantee. Specifically, PACE market orders are also subject to Supplementary Material .07, which provides that member organizations entering orders (up to 599 shares) after the opening may elect to have such orders executed: (i) Automatically on the PACE Quote, or (ii) if such execution price would be outside the New York market high-low range of the day, manually at or within the New York market high-low range of the day. Thus, market orders that would result in an out-of-range execution may be handled manually by the specialist, instead of receiving an execution, if so elected by the PACE entry firm. This provision is proposed to apply to all market orders, by deletion of the limitation to orders up to 599 shares. The purpose of this change is to provide member organizations the ability to elect out-of-range protection for all market orders within the parameters of the specialist's guarantee, because it is an important feature of the PACE System and important to member organization's order flow decisions. The Exchange notes that out-of-range protection is common to regional exchange systems.<sup>18</sup>

<sup>12</sup> The aggregate total size is provided for purposes of providing a complete example and does not affect the outcome, because only the size of the PACE Quote is relevant to the proposed execution guarantee. See Amendment No. 1, *supra* note 1.

<sup>13</sup> There is no guarantee up to the PACE Quote size, because the customer order size is greater than the specialist guarantee. See Amendment No. 2, *supra* note 2.

<sup>14</sup> Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Adopting Release"). See also Securities Exchange Act Release Nos. 38110 (January 2, 1997), 62 FR 1279 (January 9, 1997) (revising effective date until January 13, 1997); and 38139 (January 8, 1997) (revising effective date to January 20, 1997).

<sup>15</sup> See Adopting Release at 8 and note 12, *supra* note 14.

<sup>16</sup> See Adopting Release at note 144, *supra* note 14. See also Securities Exchange Act Release No. 38156 (January 10, 1997) (SR-NASD-96-43).

<sup>17</sup> See CHX, Article XX, Rule 37(b)(12), which states that notwithstanding anything contrary in Rule 37, no market or marketable limit order is automatically executed if it is greater than the size of the best bid/offer.

<sup>18</sup> See e.g., CHX, Article XX, Rule 37(a)(6), (b)(11) and (c)(6), which provide for stopping such orders.

The Exchange is also proposing to correct its provisions respecting the execution guarantee applicable to partial round-lot ("PRL") market orders. Currently, Supplementary Material .07(b) states that the odd-lot portion of PRLs of 601 or more shares shall be executed at the same price as the round-lot portion. In the case of a PRL order, the round-lot portion(s) of which is executed at more than one price, the odd-lot portion shall be executed at the same price as the last round-lot portion is executed. A similar provision appears in Supplementary Material .09 respecting PRL limit orders. These provisions are proposed to be amended, such that, in the case of a PRL order, the round-lot portion(s) of which is executed at more than one price, the odd-lot portion shall be executed at the same price as the first 100 shares (round-lot), not the last round-lot portion, as the provisions currently state. The Exchange believes that these provisions have erroneously remained in the Rule and require correction to reflect today's market practice.

#### c. Marketable Limit Orders

Limit orders are governed by separate provisions in Rule 229, namely Supplementary Material .09 and .10. Currently, round-lot limit orders up to 599 shares and the round-lot portion of PRL limit orders up to 599 shares which are entered at the PACE Quote shall be executed at the PACE Quote. This automatic execution guarantee for marketable limit orders up to 599 shares is unaffected by this proposal, other than to be reorganized into a new subparagraph (i) to differentiate marketable limit orders.

Specialists may voluntarily agree to automatically execute marketable limit orders greater than 599 shares. Although Supplementary Material .10(a) does not apply to such orders, Supplementary Material .10(b) currently provides that professional execution standards apply. At this time, the Exchange proposes to adopt a minimum automatic execution guarantee for marketable limit orders greater than 599 shares, which parallels the proposed provision in Supplementary Material .05 for market orders greater than 599 shares. Thus, where the specialist has agreed to automatically execute marketable limit orders greater than 599 shares, a marketable limit order within the guarantee is eligible for automatic execution at the PACE Quote up to the size of the PACE Quote. If the order size is greater than the size of the PACE Quote, the balance of the order would receive a professional execution, in accordance with Supplementary

Material .10(b) below. However, a specialist may agree to automatically execute orders greater than 599 shares that are also greater than the size of the PACE Quote in full at the PACE Quote.

The provisions respecting non-marketable limit orders would be reorganized as sub-paragraph (ii), but otherwise remain unchanged. Such orders which are entered at a price different than the PACE Quote will be executed in sequence at the limit price when an accumulative volume of 1000 shares of the security named in the order prints at the limit price or better on the New York market after the time of entry of any such order into PACE. For each accumulation of 1000 shares which have been executed at the limit price on the New York market, the specialist shall execute a single limit order of a participant up to a maximum of 500 shares for each round-lot limit order up to 500 shares or the round-lot portion of a PRL limit order up to 599 shares.

The purpose of amending the PACE automatic execution guarantees applicable to marketable limit orders is similar to the reasoning described above, respecting market orders. The Display Rule and other market developments similarly impact marketable limit orders. Additionally, some regional exchanges provide guarantees dependent on the size of the PACE Quote.<sup>19</sup>

The Exchange is also proposing to adopt an out-of-range protection provision for limit orders not currently covered by such a provision, namely orders less than 600 shares. As discussed above, the Exchange believes that out-of-range protection is an important PACE System feature and should be properly codified into the Rule as applicable to all order types.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, 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. Specifically, the proposal is intended to update the automatic execution guarantees for orders greater than 599 shares, out-of-range protection and partial round-lots to facilitate execution of such orders in today's marketplace. The Exchange

seeks to promote PACE System usage among its member organizations as well as its specialists. In this regard, the Exchange believes that the proposal will facilitate the acceptance of market and marketable limit PACE orders at the PACE Quote, which will promote liquidity and best execution principles with respect to such orders.

Further, the investing public will continue to benefit from the speed and efficiency of a premier regional exchange automated order routing and execution system, the PACE System. The Exchange also believes that the proposal should encourage specialists to establish automatic execution guarantees higher than 599 shares, which should similarly promote liquidity, efficiency and best execution.

The Exchange believes that the proposal is consistent with the Display Rule, in that it continues to guarantee executions at the PACE Quote, albeit limited to the PACE Quote size for orders greater than 599 shares. The execution guarantees, as amended, should nevertheless promote the market transparency and customer protection principles of the Display Rule, by continuing to offer PACE Quote and primary market protection. Guaranteeing executions based on the actual size of the PACE Quote acknowledges that enhanced customer limit order display under the new Rule should create a more transparent and accessible national market system.

In addition, the Exchange believes that the proposal is consistent with Section 11A of the Act, and paragraph (a)(1) thereunder, which encourages the use of new data processing and communication techniques that create the opportunity for more efficient and effective market operations. The Exchange notes that the specialist will be held accountable to specific, codified standards of fair execution. Thus, the use of a guarantee up to the PACE Quote size coupled with a professional execution creates consistency and certainty in the execution of PACE orders, such that investors will know how their orders are being handled. Thus, the Exchange believes that the proposal is consistent with the public interest and investor protection purposes of Section 11A, in that it should assure the practicability of executing customer orders in the best market as well as an opportunity for investors' orders being executed without the participation of a dealer.

<sup>19</sup> See e.g., CHX Article XX, Rule 37(b)(12).

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

The Exchange believes the proposed rule change will impose no inappropriate burden on competition.

### *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 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 self-regulatory organization 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. 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-97-11 and should be submitted by May 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-11527 Filed 5-2-97; 8:45 am]

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-38554; File No. SR-Phlx-97-04]

### **Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 2 and 3 to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Establishing a 4:02 p.m. Closing Time for Equity and Narrow-Based Index Options Trading, and Modifying the Index Option Exercise Cut-off Time**

April 29, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 4, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") Amendment No. 2 to the proposed rule change.<sup>3</sup> On April 23, the Exchange filed Amendment No. 3 to the proposed rule change. The proposed rule change, as amended, is described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on Amendment Nos. 2 and 3 from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

In the original rule filing, as amended by Amendment No. 1, the Exchange proposes to amend the rules of the Exchange to close equity options trading at 4:02 p.m. In Amendment No. 2, the Exchange proposes to amend Rule 101 to adopt a 4:02 p.m. trading close for narrow based index options<sup>4</sup> and amend Rule 1047 to permit two floor officials to approve a trading rotation after the normal close of trading.

In Amendment No. 3, the Exchange proposes to amend Rule 1042A and

Floor Procedure Advice G-1 ("Advice G-1") to change the index option exercise cut-off time from 4:30 p.m. (or 15 minutes after the close of trading if it occurs at a time other than the regular close of trading) to five minutes after the close of trading. Thus, the exercise cut-off time applicable to narrow-based (industry) index options proposed to close at 4:02 p.m. would be 4:07 p.m., and the cut-off time applicable to broad-based (market) index options closing at 4:15 p.m. would be 4:20 p.m. The proposal also deletes the current requirement that member organizations must accept exercise instructions until 4:15 p.m. each business day.

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 self-regulatory organization 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 self-regulatory organization 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, Proposed Rule Change*

##### **1. Purpose**

Since 1978, equity options have traded ten minutes longer than the primary market. At that time, significant delays in the reporting of stock prices were common; therefore, the additional ten minute period was necessary to receive final stock prices. These delays have now been reduced due to technological advances. Currently, the extra time period for options trading after closing prices are reported in the underlying equities results in equity options and narrow-based index options<sup>5</sup> trading without the pricing benefit of continuing stock trading. The additional ten minutes also results in repeated automatic executions at outdated options prices. Further, not all market participants are able to respond

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

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

<sup>3</sup> The proposed rule change, including Amendment No. 1, was previously noticed in the **Federal Register**. See 62 FR 5662 (February 6, 1997). Amendment No. 1 is a technical amendment to the rule filing. See letter from Theresa McCloskey, Exchange to Janice Mitnick, Commission, dated January 29, 1997.

<sup>4</sup> Rule 1042A, 1047A and 1101A(c), and Floor Procedure Advice G-2 will also be amended to conform to a 4:02 p.m. close for the narrow-based index options.

<sup>5</sup> Like equity options, narrow-based index options are sensitive to changes in the underlying equities prices. Telephone conversation between Edith Hallahan, Exchange and Janice Mitnick, Commission on April 28, 1997. See also Amendment No. 2.

<sup>20</sup> 17 CFR 200.30-3(a)(12).