

expirations would occur during the period December 20 through and including January 2 of each year. The Exchange will provide additional notices to their membership: (1) Upon approval of this proposed rule change; (2) in any marketing literature respecting the 3D FCOs which is printed in the future; (3) in early November of each year to remind the membership; and (4) in a circular at the time when the 3D FCO contracts that are not being listed, would have been listed (approximately early in December). These additional notices serve to minimize the potential for confusion concerning the application of the Exchange's rules regarding the dates of listing of 3D FCOs, and will ensure investors have adequate time to adjust their trading strategies if they so desire.

The Commission also believes that Amendment No. 1 does not raise any significant new issues that require public notice prior to approval, because Amendment No. 1 only addresses the notification provided to the Exchange's membership concerning the dates the dates when 3D FCOs will not be listed and no comments were received on the substance of the original proposal. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR-PHLX-97-07 and should be submitted by June 24, 1997.

### III. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change, as amended, is consistent

with the Act and Section 6 of the Act in particular.

*It is therefore Ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR-PHLX-97-07 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38683; File No. SR-Phlx-97-24]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Adopt an AUTOM Rule and To Request Permanent Approval for the AUTOM Pilot Program

May 27, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 2, 1997, 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 self-regulatory organization. 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 adopt Rule 1080, Philadelphia Stock Exchange Automated Options Market ("AUTOM") and Automatic Executive System ("AUTO-X"), codifying and amending the policies and procedures concerning AUTOM. The Exchange also requests permanent approval of the AUTOM pilot program. The AUTOM System and the proposed rule are described below.

#### Proposed AUTOM Rule

Proposed Rule 1080 describes the AUTOM System and its features, with paragraph (a) as the general introduction. AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the

automatic entry and routing of Exchange-listed equity options and index options orders to the Exchange trading floor. Option orders entered by Exchange member organizations into AUTOM are routed to the appropriate specialist unit on 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, in accordance with the provisions of this Rule. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. This paragraph also provides that Rule 1080 shall govern the orders, execution reports and administrative messages ("order messages") transmitted between the offices of member organizations and the trading floors of the Exchange through AUTOM.

Proposed Rule 1080(b) lists the types of orders eligible for AUTOM. Generally, only agency orders may be entered. With respect to U.S. Top 100 Index options ("TPX"), broker-dealer orders may be entered into AUTOM, but are not eligible for AUTO-X.<sup>3</sup> For purposes of AUTOM, an agency order is an order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. In addition, respecting order size, orders up to the maximum number of contracts permitted by the Exchange may be entered. Currently, orders up to 100 contracts are eligible for AUTOM,<sup>4</sup> except the maximum order size for TPX options if 500 contracts.<sup>5</sup> Separate maximum order sizes apply to AUTO-X, which is discussed below.

The following types of orders are eligible for AUTOM: day, good-till-cancelled ("GTC"), market, limit, stop, stop limit, all or none, or better, simple cancel, simple cancel to reduce size (cancel leaves), cancel to change price, cancel with replacement order, market close, market on opening, limit on opening, limit close, and possible

<sup>3</sup> See Securities Exchange Act Release No. 36429 (October 27, 1995), 60 FR 55874 (November 3, 1995) (SR-PHLX-95-35).

<sup>4</sup> See Securities Exchange Act Release No. 28516 (October 3, 1990), 55 FR 41408 (October 11, 1990) (SR-PHLX-90-18).

<sup>5</sup> See Securities Exchange Act Release No. 38782 (May 30, 1995), 60 FR 30136 (June 7, 1995) (SR-PHLX-90-30). Although the Exchange received approval to expand the maximum AUTOM order size to 500 contracts, the Exchange's Board of Governors has limited implementation to TPX only.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

duplicate orders.<sup>6</sup> The Exchange's Options Committee may determine to accept additional types of orders as well as to discontinue accepting certain types of orders. Orders may not be unbundled for the purposes of eligibility for AUTOM and AUTO-X, nor may a firm solicit a customer to unbundle an order for this purpose.

Proposed paragraph (c) defines AUTO-X. AUTO-X is a feature of AUTOM that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO-X automatically executes eligible orders using the Exchange disseminated quotation and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO-X are executed manually in accordance with Exchange rules. Manual execution of otherwise AUTO-X eligible orders may also occur when AUTO-X is not engaged.

This paragraph also provides that the Options Committee may, for any period, restrict the use of AUTO-X on the Exchange in any option, series, user or account type. Currently, orders up to 50 contracts, subject to the approval of the Options Committee, are eligible for AUTO-X.<sup>7</sup>

In addition, the Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO-X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The hours of the AUTOM System are contained in paragraph (d). The AUTOM System accepts orders beginning at 8:00 a.m. (ET). Orders received by the close of trading, as determined electronically by the AUTOM System, are eligible for execution. Orders received after such time will be rejected and returned to the order entry firm.

The functioning of AUTOM in extraordinary circumstances is governed

by paragraph (e) of the proposed rule, which specifies the procedure for re-routing AUTOM orders or disengaging AUTO-X. In the event extraordinary circumstances exist in connection with a particular class of options, two Floor Officials may determine to disengage AUTO-X with respect to that option, in accordance with Exchange procedures. In the event extraordinary conditions exist floor-wide, two Exchange Floor Officials, the Chairperson of the Options Committee or his designee may determine to disengage the AUTO-X feature floor-wide. To ensure proper notification to AUTOM users, a specialist must promptly notify the Surveillance Post of any AUTOM-related Floor Official exemptions in order for such an exemption to be valid. The Exchange's Emergency Committee, pursuant to Rule 98, may take other action respecting AUTOM in extraordinary circumstances.

Paragraph (f) outlines the specialist's obligations respecting AUTOM orders. A specialist must accept eligible orders delivered through AUTOM. A specialist must comply with the obligations of Rule 1014, as well as other Exchange rules, in the handling of AUTOM orders. A specialist is responsible for engaging AUTO-X with respect to an assigned option within three minutes after completing an opening or reopening rotation of that option. However, where extraordinary circumstances exist, an exemption may be obtained pursuant to paragraph (e) above.

A specialist must respond promptly to all messages communicated through AUTOM, including order entry, execution and cancellation and replacement of orders as well as administrative messages. A specialist is responsible for the remainder of an AUTOM order where a partial execution occurred. Lastly, a specialist is responsible for the visibility to the trading crowd of both the screens displaying incoming AUTO-X orders as well as the bids/offers for the at-the-money strike prices in displayed options.

Proposed paragraph (g) contains Wheel provisions, which are discussed below.

Proposed paragraph (h) is entitled "Responsibility for AUTOM Orders." A member organization who initiates the transmission of an order message to the floor through AUTOM is responsible for that order message up to the point that a legible and properly formatted copy of the order message is received on the trading floor by the specialist unit. Thereafter, the specialist who is registered in the option specified in the

order message is responsible for the contents of the order message received and is responsible for the order until one of the following occurs: (i) an execution report for the entire amount of the order is properly sent; (ii) a cancellation acknowledgment is properly sent; or (iii) an order properly expires.

For the convenience of members using AUTOM, the Exchange provides an AUTOM Service Desk on the trading floor to assist in the operation of AUTOM.<sup>8</sup> In accordance with Exchange By-Law Article XII, Section 12-11, the Exchange shall not be liable for any loss, expense or damage resulting from or claimed to have resulted from the acts, errors or omissions of its agents, employees or members in connection with AUTOM, or of the AUTOM System.

Lastly, proposed Commentary .01 to the Rule pertains to Auto-Quote, another feature of AUTOM. Automatic Quotation ("Auto-Quote") is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations. Commentary .02 states that the Electronic Order Book is the Exchange's automated specialist limit order book, which automatically routes unexecuted AUTOM orders to the book and displays orders real-time in order of price/time priority. Orders not delivered through AUTOM may also be entered onto the Electronic Order Book.

#### Wheel Provisions

The Wheel is an automated mechanism for assigning floor traders (*i.e.* specialists and Registered Options Traders ("ROTs")), on a rotating basis, as contra-side participants to AUTO-X orders. The Exchange's Wheel provisions were approved by the Commission in 1994 as Floor Procedure Advice ("Advice") F-24,<sup>9</sup> but do not currently appear in other Exchange rules. Certain Wheel provisions are currently being amended, separately.<sup>10</sup>

<sup>8</sup> See Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988) (SR-Phlx-88-10 stating the Exchange shall establish an AUTOM service desk on the options trading floor to handle AUTOM trade inquiries and status of reports).

<sup>9</sup> See Securities Exchange Act Release No. 35033 (November 30, 1994), 59 FR 63152 (December 4, 1994) (SR-Phlx-94-32).

<sup>10</sup> See SR-Phlx-97-20 (proposing to amend Wheel provisions to reduce the rotation frequency for the specialist in large crowds) and SR-Phlx-97-21 (proposing to establish a procedure for the removal of ROTs from the Wheel to extend the Wheel assignment area in certain circumstances. See also Securities Exchange Act Release No. 37977

<sup>6</sup> See Securities Exchange Act Release No. 35601 (April 13, 1995), 60 FR 19616 (April 19, 1995) (SR-Phlx-95-18).

<sup>7</sup> See Securities Exchange Act Release No. 36601 (December 18, 1995), 60 FR 66817 (December 26, 1995) (SR-Phlx-95-39).

At this time, the Exchange is proposing to incorporate the Wheel provisions of Advice F-24 into the proposed AUTOM Rule as paragraph (h).

Specifically, contra-party participation for AUTO-X automatic executions shall rotate among Wheel Participants (which are specialists and ROTs signed-up on the Wheel for that listed option) in each option in accordance with procedures established by the Exchange. The Wheel will be activated each trading day within three minutes following the completion of the opening rotation for that listed option. An ROT must be present in his Wheel assignment area to participate in Wheel Executions. Specialists on the options floor are required to participate on the Wheel in assigned issues.

No two associated or dually-affiliated ROTs may be on the Wheel for the same option at the same time. Regardless of an ROT's total assigned issues, an ROT may only sign-on the Wheel in line assignment area at any given time.<sup>11</sup> In order to be placed on the Wheel for an entire trade day, the respective ROT must sign-on, in person, on the trading floor for that listed option.

AUTO-X participation shall be assigned to Wheel Participants on a rotating basis, beginning at a random place on the rotational Wheel each day, from those participants signed-on in the listed option. The Wheel shall rotate and assign contracts in accordance with procedures established by the Exchange.

#### *Permanent Approval of Pilot Program*

The AUTOM system has operated on a pilot basis since 1998, when it was first approved by the Commission for market orders of up to five contracts for twelve Phlx near-month equity options.<sup>12</sup> Since that time, AUTOM has been extended several times, generally

in one-year increments.<sup>13</sup> AUTOM has also been amended several times.<sup>14</sup>

At this time, the Exchange proposes permanent approval of the AUTOM pilot program. In the most recent extension of the pilot program until June 30, 1997, the Commission stated that the Exchange's request for permanent approval should be accompanied by a report covering the period between June 30, 1996 and January 1, 1997, describing: (1) the benefits provided by AUTOM; (2) the degree of AUTOM usage, including the number and size of orders routed

<sup>13</sup> See Securities Exchange Act Release Nos. 25868 (June 30, 1988), 53 FR 25563 (SR-Phlx-88-22 extended through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (SR-Phlx-88-33 extended through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (SR-Phlx-89-01 extended through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (SR-Phlx-89-03 extended through June 30, 1990); 28265 (July 26, 1990), 55 FR 31274 (SR-Phlx-90-16 extended through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (SR-Phlx-90-34 extended through December 31, 1991); 32559 (June 30, 1993), 58 FR 36496 (SR-Phlx-93-03 extended through December 31, 1993); 33405 (December 30, 1993), 59 FR 790 (SR-Phlx-93-57 extended through December 31, 1994); 35183 (December 30, 1994), 60 FR 2420 (SR-Phlx-94-41 extended through December 31, 1995); 36582 (December 13, 1995), 60 FR 65364 (SR-Phlx-95-78 extended through December 31, 1996); and 38104 (December 31, 1996), 62 FR 1017 (SR-Phlx-96-51 extended through June 30, 1997).

<sup>14</sup> See Securities Exchange Act Release Nos. 25868 (June 30, 1988), 53 FR 25563 (SR-Phlx-88-22 AUTOM extended to 37 options); 26354 (December 13, 1988), 53 FR 51185 (SR-Phlx-88-33 expanded from 5 to 10 contracts in all strikes and months); 26522 (February 3, 1989), 54 FR 6455 (SR-Phlx-89-01 adding 25 additional equity options totaling 62); 2,599 (January 9, 1990), 55 FR 1751 (SR-Phlx-89-03 approving AUTO-X for market and marketable limit orders in three strikes and all months up to ten contracts in 12 equity options and day limit orders deliverable through AUTOM); 28516 (October 3, 1990), 55 FR 41408 (SR-Phlx-90-18 expanding from 10 to 100 contracts); 28978 (March 15, 1991), 56 FR 12050 (SR-Phlx-90-34 extending AUTO-X to all equity options and AUTOM to accept GTC and cabinet orders); 29782 (October 3, 1991), 56 FR 55146 (SR-Phlx-91-19 extending AUTO-X to all strike prices and expiration months); 29662 (September 9, 1991), 56 FR 46816 (SR-Phlx-91-31 expanding AUTO-X to 20 contracts for Duracell options to match CBOE/Amex/NYSE); 29837 (October 18, 1991), 56 FR 36496 (SR-Phlx-91-33 expanding AUTO-X from ten to 20 contracts); 32906 (September 15, 1993), 58 FR 15168 (SR-Phlx-92-38 expanding AUTO-X from 20 to 25 contracts); 34920 (October 31, 1994), 59 FR 55510 (SR-Phlx-94-40 codifying AUTOM for index options); 35033 (November 30, 1994), 59 FR 63152 (SR-Phlx-94-32 adopting the Wheel); 35601 (April 13, 1995), 60 FR 19616 (SR-Phlx-95-18 codifying order types); 35781 (May 30, 1995), 60 FR 30131 (SR-Phlx-95-29 expanding AUTO-X to 50 contracts for TPX only); 35782 (May 30, 1995), 60 FR 30136 (SR-Phlx-95-30 extending AUTOM from 100 to 500 contracts); 36429 (October 27, 1995); 60 FR 55874 (SR-Phlx-95-35 permitting broker-dealer orders in AUTOM for TPX only); 36467 (November 8, 1995), 60 FR 57615 (SR-Phlx-95-33 limiting AUTO-X in XOC); 36601 (December 18, 1995), 60 FR 66817 (SR-Phlx-95-39 expanding AUTO-X from 25 to 50 contracts); and 37977 (November 25, 1996), 61 FR 63889 (SR-Phlx-96-49 amending Wheel provisions).

through AUTOM as well as the number and size of orders routed through AUTO-X; (3) the system capacity of AUTOM and AUTO-X; and (4) any problems the Exchange has encountered with the routing and execution features. This report is submitted separately. Generally, the Exchange believes that, since the last extension of the pilot program, AUTOM has functioned properly and efficiently, without any material problems reported by Phlx members or AUTOM users, and without significant malfunctions or operational failures.

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

## **II. Self-Regulatory Organization's Statements 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, the Proposed Rule Change*

#### **1. Purpose**

Currently, the Exchange has no rule in place respecting the use of AUTOM, such as Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System ("PACE"). Most other exchanges have adopted such rules with respect to their automated systems.<sup>15</sup> These rules generally describe the systems and its features, eligible orders and responsibilities pertaining to the systems. The purpose of the proposed rule change is to adopt Rule 1080 to govern as the AUTOM Rule. Future amendments to AUTOM, such as increasing the size of eligible orders, would include an amendment to the proposed rule.

This proposal identifies three types of proposed amendments within the AUTOM Rule. The first category consists of provisions previously approved by the Commission. The second category is comprised of provisions which, although not

<sup>15</sup> See e.g., American Stock Exchange ("Amex") Rule 60.

(November 25, 1996), 61 FR 63889 (December 2, 1996) (SR-Phlx-96-49).

<sup>11</sup> However, the Exchange recently filed with the Commission a proposed rule change (SR-Phlx-97-21) to permit a floor trader to participate on Wheels not located within one assignment area, defined as two contiguous quarter turrets, so long as the floor trade obtained the approval of two floor officials and the agreement of the specialists and participants on those particular Wheels.

<sup>12</sup> See *supra* note 8.

specifically approved by the Commission, codify existing practice. The remaining provisions, included in the third category, are being introduced into AUTOM by way of this proposal.

#### a. Existing Provisions

First, the definition of the AUTOM System was specifically approved by the Commission and appears repeatedly in Commission orders amending and extending the pilot program.<sup>16</sup> AUTOM is described as the Exchange's electronic order delivery and reporting system through which automatically-entered orders are routed directly to the appropriate specialist on the Exchange's equity/index option trading floor.

Second, Rule 1080(b) is intended to identify the types of orders eligible for entry into AUTOM. The eligibility of specific sizes and order types has been approved by the Commission.<sup>17</sup> The prohibition against unbundling orders was also approved by the Commission.<sup>18</sup>

Rule 1080(c) defines AUTO-X and lists the types of orders eligible for automatic execution. In 1991, the commission approved the use of AUTO-X as part of the AUTOM pilot program for market and marketable limit orders.<sup>19</sup> Thus, AUTO-X has been previously described and approved by the Commission.

Lastly, the Exchange proposes to incorporate the provisions of Advice F-24, concerning the Wheel, into the proposed AUTOM Rule. The purpose of the Wheel is to increase the efficiency and liquidity of order execution through AUTO-X by including all floor traders in the automated assignment of counterparties to incoming AUTO-X orders. Thus, the Wheel is intended to make AUTO-X more efficient, as contra-side participation will be assigned automatically, and no longer entered manually. The Wheel is also intended to promote liquidity by including ROTs, as opposed to solely Specialists, as a contra-side to AUTO-X orders. The floor-wide roll-out of the Wheel was completed the week of April 21, 1997.

<sup>16</sup> See e.g., Securities Exchange Act Release No. 32559 (June 30, 1993), 58 FR 36496 (July 7, 1993) (SR-Phlx-93-03 at I. and II.A., second paragraph).

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

<sup>18</sup> See Securities Exchange Act Release No. 27599 (January 9, 1990), 55 FR 1751 (January 18, 1990) (SR-Phlx-89-03 at note 9, which states that a retail user of the AUTOM System may not separate a 20 contract order into two 10 contract orders for the purpose of making such order eligible for automatic execution). See also Phlx Rules 229.19 and 1015(a)(vii).

<sup>19</sup> See Securities Exchange Act Release No. 28978 (March 15, 1991), 56 FR 12050 (March 21, 1991) (SR-Phlx-90-34).

#### b. Codification Provisions

Certain parts of the proposed rule merely explain aspects of AUTOM and codify existing policies respecting the System. For example, in Rule 1080(a), the requirement that equity option and index option specialists are required to participate in AUTOM is implicit to the functioning of AUTOM, but is not codified in any Exchange rule. This requirement is rooted in the obligations of Rule 1014, such that Exchange specialists are required to participate in facilitating AUTOM orders, because depth and liquidity are integral to the fair execution of such orders.

Proposed sub-paragraph (b)(iii) would state that the Exchange's Options Committee determines the eligibility of order types for AUTOM and AUTO-X, including to discontinue accepting certain order types. Although this statement has not been specifically approved by the Commission, it restates the authority of the Options Committee, which is enumerated in Exchange By-Law Article X, Section 10-18.<sup>20</sup>

Rule 1080(e) governs extraordinary circumstances respecting AUTOM and AUTO-X. In the event such circumstances arise with respect to a particular option class, pursuant to Advice A-13, two Floor Officials may authorize the disengagement of AUTO-X.<sup>21</sup> Accordingly, this existing requirement would be incorporated into the proposed AUTOM Rule. Further, the requirement in Advice A-13 that the specialist engage AUTO-X within three minutes of completing an opening rotation is also codified in Rule 1080(e). However, in the event the extraordinary circumstances prevail floor-wide, the approval of two Floor Officials as well as the Chairperson of the Options Committee would be required to disengage AUTO-X.

Commentaries .01 and .02 describe two AUTOM System features currently in place. As stated above, Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations. The Electronic Order Book is the automated specialist limit order book, which automatically routes unexecuted

<sup>20</sup> Generally, the Options Committee has supervision over the dealings of members on the equity/index options trading floor, including floor employees of members, and of the premises of the Exchange facility, including the location of equipment and the use of space. Specifically, the Options Committee supervises all connections or means of communications with the equity/index options floor.

<sup>21</sup> See Securities Exchange Act Release No. 29575 (August 16, 1991), 56 FR 41715 (August 22, 1991) (SR-Phlx-91-16).

AUTOM orders to the book and displays orders real-time in order of price/time priority. Both are existing features being codified into the AUTOM Rule.

#### c. New AUTOM Provisions

The first new provision respecting AUTOM is the second paragraph of Rule 1080(a), which states that Rule 1080 shall govern all order messages transmitted between the offices of member organizations and Phlx trading floors through AUTOM. This provision is intended to establish Rule 1080 as the AUTOM Rule. Sub-paragraph (b)(i) provides that only agency orders may be entered into AUTOM. The purpose of this provision is to incorporate a general agency definition, similar to other systems rules.<sup>22</sup>

The Exchange is proposing to codify the ability of the Options Committee to restrict the use of AUTO-X with respect to a particular option class, series, user or account type. As the Exchange standing committee governing options trading floor systems pursuant to Exchange By-Law Article X, Section 10-18, the Options Committee currently determines the maximum order size eligibility for AUTOM and AUTO-X, as well as any other AUTOM-related issues.<sup>23</sup> The Exchange believes that the ability to limit the availability of AUTO-X may be necessary to maintain fair and orderly markets and maintain AUTO-X volume guarantees, consistent with AUTO-X's purpose of facilitating expeditious executions of small customer orders at fair prices.

The Exchange notes that AUTO-X is generally available for all option series. In 1995, the Exchange received Commission approval to limit the availability of AUTO-X for certain, high-priced series of National Over-the-Counter Index options ("XOC").<sup>24</sup> At this time, the Exchange proposes to restore these XOC series to AUTO-X eligibility. The Exchange seeks to codify a provision enabling the Options Committee to restrict AUTO-X to certain series or options, as stated above. The Exchange believes that this is consistent with the provisions and practices of other exchanges.<sup>25</sup> The Exchange believes that such a limitation is appropriate in light of the market conditions respecting certain options or series that may render it difficult for floor traders to quickly update their

<sup>22</sup> See e.g., Phlx Rule 229.02.

<sup>23</sup> See *supra* note 23.

<sup>24</sup> See Securities Exchange Act Release No. 36467 (November 8, 1995), 60 FR 57615 (November 16, 1995) (SR-Phlx-95-33 limiting AUTO-X eligibility to XOC series where the bid is \$10 or less).

<sup>25</sup> See *supra* note 24 at footnotes 16-17 and accompanying text. See CBOE Rule 6.8(e).

quotations. Thus, the Exchange believes that the proposed language is a reasonable balance between preserving the availability of AUTO-X and enabling the floor traders who honor the markets subject to automatic execution to properly update such markets.

The second paragraph of Rule 1080(c) propose the ability to increase the maximum size of orders eligible for AUTO-X to correspond to the largest maximum size permitted by any options exchange on which a multiply-traded issue trades. This provision is intended to provide consistent eligibility standards for the automatic execution of orders among options exchanges. For example, assuming XYZ is a multiply-traded option, if another options exchange receives Commission approval to increase the automatic execution size eligibility, which thus becomes applicable to XYZ option, then the Phlx would file a proposed rule change pursuant to Section 19(b)(3)(A) of the Act with the Commission<sup>26</sup> to identically increase the automatic execution size eligibility of XYZ respecting Phlx AUTO-X orders to match such higher amount. The higher size eligibility would only apply to a Phlx option meeting these requirements—all other Phlx options could only be subject to a higher AUTO-X size eligibility standard by Commission approval of a proposed rule change pursuant to Section 19(b)(2) of the Act. The Exchange believes that this provision should facilitate uniformity and efficiency by eliminating duplicative filings published for comment from the various options exchanges.<sup>27</sup>

Rule 1080(d), Hours, states that AUTOM orders are accepted beginning at 8:00 AM (ET) until the close of trading. Orders received after such time, as determined electronically by the AUTOM System, are rejected and returned to the order entry firm. Although this provision was not discussed in the AUTOM pilot program, the AUTOM System obviously has certain hours during which orders can be entered. Thus, the Exchange proposes at this time to codify such hours into its AUTOM Rule.

Next, proposed paragraph (f) pertains to a specialist's obligations respecting AUTOM, and generally requires that a

specialist must accept all eligible orders and handle such orders consistent with Rule 1014. For example, Rule 1014 requires the specialist to maintain fair and orderly markets. Further, subparagraph (f)(ii) provides that a specialist must respond promptly to all AUTOM messages, which is intended to promote just and equitable principles of trade. Sub-paragraph (f)(iii) states that a specialist is responsible for the remainder of partially executed orders, consistent with the maintenance of fair and orderly markets. The specialist will be responsible for the visibility to the trading crowd of both the OpView screens displaying incoming AUTO-X orders as well as the at-the-money strikes in displayed options. Disputes within the trading crowd regarding what should be displayed are to be referred to a Floor Official. The purpose of this provision is to provide the trading crowd with the most pertinent trading information.

In the event extraordinary conditions exist floor-wide, two Exchange Floor Officials and the Chairperson of the Options Committee or his designee may determine to disengage the AUTO-X feature floor-wide. This provision represents a change to prior representations that the Emergency Committee must authorize any floor-wide disengagement or nonactivation of AUTO-X. At the same time, this provision codifies Advice A-13 into the proposed AUTOM Rule. Although the Exchange believes that AUTO-X is an important feature of the AUTOM System, there are situations where, as contemplated by Advice A-13, it may be inappropriate to engage AUTO-X.

The Exchange is also proposing to adopt a liability provision, premised with a paragraph on member responsibility. The purpose of the provision is to recognize that, absent such language, specialists may be deemed accountable for AUTOM orders, regardless of the circumstances. Thus, apportioning responsibility for AUTOM messages based on the status of such message is intended to place responsibility on the party taking the last action respecting that message. In the interest of fairness and certainty, the Exchange believes that party is best suited to follow-up on the order message. This provision is similar to that of other exchanges.<sup>28</sup> As for Exchange liability, express reference is made to the important Exchange by-law stating that the Exchange shall not be liable for any damages sustained by a member or member organization growing out of the use or enjoyment of

the facilities afforded to members for the conduct of their business.

## 2. Statutory Basis

In view of its automatic order routing, delivery and execution functions, the Exchange believes that the AUTOM System increases the speed and efficiency of the execution of its orders. The proposed rule change is intended to incorporate the many features, benefits and procedures of the AUTOM System into an AUTOM Rule. In sum, the Exchange believes that the proposal is consistent with Section 6 of the Act<sup>29</sup> in general and in particular with Section 6(b)(5),<sup>30</sup> because it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest. Some provisions of the AUTOM rule incorporate different Exchange statements approved in prior proposed rule changes respecting the AUTOM pilot program. Other provisions codify the functions, features and obligations respecting AUTOM, including incorporating different Exchange statements from prior proposed rule changes respecting the AUTOM pilot program. The Exchange believes that a single AUTOM Rule should facilitate AUTOM System usage and certainty respecting order handling, by providing an easy reference for users of the System.

The Exchange believes that the new AUTOM provisions should solidify AUTOM procedures, which should, in turn, promote liquidity, enhance the use of AUTOM and facilitate transactions through AUTOM. More specifically, the Phlx believes that the proposed amendment relating to maximum automatic execution order size should promote the use of exchange automated systems and prevent investor confusion by fostering uniformity among exchanges in maximum automatic execution order sizes in multiply-traded issues.

The Exchange also believes that the proposed rule change is consistent with Section 11A(a)(1)(B) of the Act,<sup>31</sup> in that AUTOM is intended to improve, through the use of new data processing and communications techniques, the efficiency with which transactions in Phlx equity and index options are executed. Further, the Exchange believes that AUTOM fosters competition among the options

<sup>26</sup> Such a proposed rule change may qualify as a systems change that could become effective upon filing pursuant to Rule 19b-4(e)(5).

<sup>27</sup> See e.g., Securities Exchange Act Release Nos. 36420 (October 26, 1995), 60 FR 55619 (November 1, 1995) (SR-CBOE-95-66); and 32956 (September 24, 1993), 58 FR 51893 (October 5, 1993) (SR-CBOE-92-40). See also CBOE Rule 6.8, Interpretation and Policies .01.

<sup>28</sup> See e.g., Amex Rule 60.

<sup>29</sup> 15 U.S.C. 78f(b).

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> 15 U.S.C. 78k-1(a)(1)(B).

exchanges, which have similar systems in place.

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

The Phlx 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**

Within 35 days of the date of publication of this notice in the **Federal Register** within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx 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. 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 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 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-97-24 and should be submitted by June 24, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>32</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-14412 Filed 6-2-97; 8:45 am]

BILLING CODE 8010-01-M

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary of Transportation**

**Invitation for Public Comments on DOT Draft Cargo Liability Study**

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Invitation for Public Comments on DOT Draft Cargo Liability Study.

The Department of Transportation (DOT) is required by the Interstate Commerce study to determine whether any modifications or reforms should be made to the loss and damage provisions on motor carriage, including those relating to limitations of liability. The statute requires the Secretary, at a minimum, to consider the following factors:

- a. Efficient delivery of transportation services
- b. International harmony
- c. Intermodal harmony
- d. The public interest; and
- e. The interests of carriers and shippers

The study is to be submitted to the Congress. DOT has previously invited public comments (see **Federal Register**, Vol. 61 (6056) February 15, 1996).

The public is now invited to comment on a draft of the DOT study. The draft may be accessed electronically on <http://ostpxweb.dot.gov/> and a hard copy may be obtained from the contact person listed below. In the current draft the statistics of the 1975 DOT study of cargo liability are used in several places as markers and as basis for requests to shippers, carriers and insurance interest either to produce better statistics or to verify that the loss and damage component of the value of cargo remains approximately as before.

DOT will accept comments for thirty days from the date of publication of this notice. At the end of the comment period DOT plans to review all comments and to complete the study.

*For further information contact:* Paul B. Larsen, Office of the General Counsel, room 10102, 400 7th Street SW., Washington DC 20590. (202) 366-9163. E-mail: Paul.Larsen@ost.dot.gov

Dated: May 19, 1997.

**Joseph F. Camy,**

*Deputy Assistant Secretary of Transportation for Transportation Policy.*

[FR Doc. 97-14386 Filed 6-2-97; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

[Docket Nos. 97-017; Notice 2, 97-018; Notice 2, 97-019; Notice 2]

**Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

**SUMMARY:** This notice announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

**DATES:** These decisions are effective as of June 3, 1997.

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has

<sup>32</sup> 17 CFR 200.30-3(a)(12).