

### *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**

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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-97-17 and should be submitted by July 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-38785; File No. SR-Phlx-97-15]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Minimum Size Guarantee**

June 30, 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 March 28, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange pursuant to Rule 19b-4 of the Act, proposes to amend Phlx Rule 1015 (Quotation Guarantees); Phlx Rule 1033 (Bids and Offers—Premium); and Floor Procedure Advice ("Advice") A-11 (Responsibility to Make Ten-Ups Markets), to reflect that the minimum size guarantee applicable to Phlx equity and index options may be larger than ten contracts. References to ten-up markets in these provisions are proposed to be replaced with "minimum size guarantee." Advice A-11 will thus be retitled "Responsibility to Make Markets of the Minimum Size Guarantee."

The Exchange also proposed that broker-dealer ("BD") orders for less than the minimum size guarantee that are represented at the trading post by a Floor Broker be treated the same as orders of ROTs for that amount (*i.e.*, such bids/offers will not be disseminated and will have no standing in the crowd).

In addition, the Exchange proposes to reorganize Phlx Rule 1015 by adding sub-paragraphs (1) and (2) to paragraph (a) to differentiate the requirements

applicable to floor traders from the agency provisions. The Exchange is also proposing to require that broker-dealer electronic messages (sometimes used in lieu of floor tickets) be marked B/D. Lastly, the Exchange is clarifying that the best quoted bid or offer ("BBO") referred in this Rule is the Exchange's displayed BBO.

#### **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, the Proposed Rule Change*

Pursuant to Phlx Rule 1033(a), the Exchange requires that public orders be filled to a minimum depth of at least ten contracts at the BBO. This is often referred to as the "ten-up" requirement. Phlx Rule 1015 and Advice A-11 delineate the obligations of floor traders respecting Exchange quotation guarantees. Since 1987, these provisions have been intended to benefit customers by establishing ten contracts as the minimum depth to which such orders are entitled an execution at the best bid or offer.<sup>3</sup> The intent was also to encourage floor traders to be more competitive and make size markets. In order for these purposes to be achieved, the Commission recognized that the floor traders' markets cannot be exhausted by competitors to the detriment of customers.<sup>4</sup>

In recent years, higher minimum guarantees have been established in certain options—higher than the traditional minimum size guarantee of ten contracts. These higher guarantees correspond to the maximum size of orders eligible for the Phlx Automated Options Market ("AUTOM") system's automatic execution feature, AUTO-X.

<sup>3</sup> See Securities Exchange Act Release Nos. 24580 (June 11, 1987) 52 FR 23120 (June 17, 1987) (File No. SR-Phlx-87-09), and 26669 (March 27, 1989), 54 FR 13282 (March 31, 1989) (File No. SR-Phlx-89-02).

<sup>4</sup> See Securities Exchange Act Release No. 34400 (July 19, 1994), 59 FR 38011 (July 26, 1994) (File No. SR-Phlx-91-45).

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

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

<sup>6</sup> 17 CFR 200.30-3(a)(12).

Currently, the maximum order size permissible for AUTO-X is 50 contracts.<sup>5</sup>

Under this proposal, the ten-up requirement would be replaced by the higher minimum size guarantee for purposes of Phlx Rule 1015 and Advice A-11.<sup>6</sup> For example, in an option for which the minimum size guarantee is 20 contracts, Phlx Rule 1015 would require that a floor trader (*i.e.*, Specialists and ROTs) at the BBO be responsible for not just ten contracts, but the entire minimum size guarantee of 20 contracts. Where the BBO consists of more than one ROT, those ROTs together are responsible for 20 contracts.

Second, ROT orders (represented by Floor Brokers) for less than the minimum size guarantee are not currently disseminated as the BBO. However, ROT bids/offers must nevertheless be firm for the entire minimum size guarantee. The Exchange proposes to amend sub-paragraph (iv) of Rule 1015 to treat broker-dealer orders for less than the minimum size guarantee the same as ROT orders by not displaying them.<sup>7</sup>

Currently, the reason for not including ROT orders for less than ten contracts is that the BBO must be firm for the amount of the minimum size guarantee. Pursuant to the Phlx Rule 1015 and Advice A-11, an order availing upon the BBO will be filled by the ROT order, but if the "availing" order is greater than the ROT order, the difference up to the minimum size guarantee in that option must be filled by the floor traders with the immediately prior best bid or offer. For instance, if the market is 2-1/4-3/8, with an ROT order to sell 5 contracts at 3/8 comprising the offer, then the BBO is really 2-1/4-1/2, because the ROT order is not part of the BBO. If it were, the floor traders offering at 1/2 would be required to fill the other five contracts of an incoming order to buy 10 at 3/8, where the minimum size guarantee is ten contracts. Not including ROT orders less than the minimum size guarantee prevents this outcome. Nevertheless, this outcome does result under current rules when customer or broker-dealer orders for less than the minimum size guarantees comprise the BBO. This proposal would treat BD orders for less than the minimum size guarantee the

same as ROT orders. The Phlx asserts that BDs, unlike customers, are not entitled to the ten-up guarantee and thus should not generate quote distortions to the detriment of floor traders, who must honor the size difference.

The purpose of this change is to prevent floor traders with the immediate prior best bid or offer from having to fill the remainder (up to the minimum size guarantee) at the better price as a result of a non-customer bid/offer creating the BBO. Thus, only where a bid/offer for less than the minimum guarantee is on behalf of a customer shall it be reflected as the BBO, requiring floor traders to supply the additional contracts.

According to the Phlx, this proposal should encourage larger minimum size guarantees by freeing floor traders from the fear that they will be frequently providing guarantees better than their own true market to make up the size difference for broker-dealer orders at a better price.

In the course of preparing these amendments to Phlx Rule 1015 and Advice A-11, an Exchange review of these provisions revealed that certain organizational changes are needed to update and clarify them. Thus, the Exchange proposes to reorganize Phlx Rule 1015 by adding sub-paragraphs (1) and (2) to paragraph (a) to differentiate the requirements applicable to floor traders from the agency provisions. In addition, the Exchange is proposing to require that broker-dealer electronic messages (sometimes used in lieu of floor tickets) be marked B/D. Lastly, the Exchange is clarifying that the BBO referred in this Rule is the Exchange's displayed BBO.

The Exchange represents that the proposal at hand is similar to the rules and policies of other exchanges. For instance, market maker bids/offers for less than 20 contracts on the Pacific Exchange are represented in the trading crowd, but not disseminated. Similarly, broker-dealer proprietary orders that are represented by a Floor Broker for less than 10 contracts in the S&P 100 Index option ("OEX") are not disseminated on the Chicago Board Options Exchange.<sup>8</sup>

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 and protect investors and the public interest by recognizing that in order to preserve option customer size guarantees, broker-dealer orders for less

than the minimum size guarantee should not affect the displayed BBO, because such broker-dealers do not have the concurrent obligation, as do floor traders, to honor that market up to the guaranteed size for the Exchange's customers. The proposed rule change does not permit unfair discrimination between customers, issuers, brokers and dealers, because the proposal is intended to ensure the fair operation of display requirements and preserve customer guarantees, without unfairly burdening the floor traders who must honor such guarantees.

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

The self-regulatory organization 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 with respect to 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 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

<sup>5</sup> See Securities Exchange Act Release No. 36601 (December 18, 1995), 60 FR 66817 (December 26, 1995) (File No. SR-Phlx-95-39).

<sup>6</sup> Similarly, Phlx Rule 1033(a) will expressly refer to the minimum size guarantee requirements of Phlx Rule 1015.

<sup>7</sup> See Securities Exchange Act Release No. 28722 (December 28, 1990), 56 FR 542 (January 7, 1991) (File No. SR-Phlx-89-57).

<sup>8</sup> See, *e.g.*, Securities Exchange Act Release No. 36880 (February 23, 1996), 61 FR 7839 (February 29, 1996) (File No. SR-CBOE-95-70).

available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-97-15 and should be submitted by July 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38792; File No. SR-Phlx-97-24]

### Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. To Adopt an AUTOM Rule and To Request Permanent Approval for the AUTOM Pilot Program

June 30, 1997.

#### I. Introduction

On May 2, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") 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> a proposed rule change to adopt rule 1080, Philadelphia Stock Exchange Automated Options Market ("AUTOM") and Automatic Execution System ("AUTO-X"), codifying and amending the policies and procedures concerning AUTOM and to obtain permanent approval for the AUTOM pilot program. On June 30, 1997, the Phlx submitted Amendment No. 1 to the proposed rule change.<sup>3</sup>

The proposed rule change was published for comment in the **Federal Register** on June 3, 1997.<sup>4</sup> No comments were received on the proposal. This order grants accelerated approval to the proposal, as amended.

#### II. Description of the Proposal

AUTOM is the Exchange's electronic order delivery and reporting system, that provides for the automatic entry and routing of Exchange-listed equity options and index options orders to the Exchange trading floor. AUTOM has operated on a pilot basis since 1988.<sup>5</sup> Since that time, AUTOM has been extended several times, generally in one-year increments.<sup>6</sup> AUTOM also has been amended several times during the operation of the pilot.<sup>7</sup>

"exemptions" with respect to disengaging AUTO-X; and (5) clarifying several aspects of the proposal.

<sup>4</sup> See Securities Exchange Act Release No. 38683 (May 27, 1997), 62 FR 30366 (June 3, 1997) ("Release No. 38683").

<sup>5</sup> See Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988) (SR-Phlx-88-10).

<sup>6</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>7</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 6465 (SR-Phlx-89-01 adding 25 additional equity options totaling 62); 27599 (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 extending 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

Currently, the Exchange has no rule governing the use of its AUTOM system. 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 automatically; however, only certain orders are eligible for AUTOM's automatic execution feature, AUTO-X, as provided in the proposed rule. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements.

The proposal delineates the types of orders eligible for AUTOM. Generally, only agency orders may be entered.<sup>8</sup> However, broker-dealer orders for U.S. Top 100 Index ("TPX") options may be entered into AUTOM, but are not eligible for AUTO-X. In addition, with respect to 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>9</sup> except the maximum order size for TPX options is 500 contracts.<sup>10</sup> Separate maximum order sizes apply to AUTO-X, as discussed below. Moreover, the Exchange's Options Committee may determine to accept additional types of orders for entry into AUTOM as well as to discontinue accepting certain types of orders.<sup>11</sup>

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

(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).

<sup>8</sup> See Amendment No. 1, *supra* note 3.

<sup>9</sup> See Securities Exchange Act Release No. 28516 (October 3, 1990), 55 FR 41408 (October 11, 1990) (SR-Phlx-90-18).

<sup>10</sup> See Securities Exchange Act Release No. 35782 (May 30, 1995), 60 FR 30136 (June 7, 1995) (SR-Phlx-95-30). 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>11</sup> The Commission notes that if the Exchange desires to amend the types of orders eligible for AUTOM, it should contact the Division of Market Regulation to determine if a filing with the Commission pursuant to Section 19(b) of the Act is necessary.

<sup>9</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.

<sup>3</sup> See Letter from Philip H. Becker, Senior Vice President and Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated June 27, 1997 ("Amendment No. 1"). In Amendment No. 1, the Phlx amended the proposal by: (1) Clarifying the Exchange's current policy with respect to the eligibility of options for AUTO-X; (2) deleting the sentence defining "agency order"; (3) deleting the reference to "user or account type" with respect to the Options Committees authority to restrict the use of AUTO-X; (4) deleting references to