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-97–34 and should be submitted by August 28, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–20751 Filed 8–6–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38898; File No. SR–Phlx–97–11]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3: Thereto by the Philadelphia Stock Exchange, Inc., Relating to PACE Execution Guarantees

August 1, 1997.

On March 3, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Rule 229 (''Rule''), Philadelphia Stock Exchange Automated Communication and Execution System (''PACE''). On April 4, 1997, the Phlx filed Amendment No. 1 to the proposal.[3] On April 22, 1997, the Exchange filed Amendment No. 2 to the proposed rule change.[4]

Notice of the proposal and Amendment Nos. 1 and 2 was published for comment and appeared in the **Federal Register** on May 5, 1997.[5] No Comment letters were received on the proposal. On June 16, 1997, the Phlx filed Amendment No. 3 to the proposed rule change.[6] This order approves the Phlx's proposal, as amended.

I. Description of the Proposal

A. History of PACE

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 (up to 599 shares) to the specialist for manual execution. Thereafter, PACE order size eligibility increased, automatic execution became a feature of PACE, and the professional execution standard for PACE orders greater than 600 shares was codified.[7] Pursuant to Supplementary Material .02 of the Rule, only agency orders are currently executed through PACE.[8] PACE orders are only eligible for execution after the primary market has opened.[9]

B. Proposed Changes

The Phlx proposes to amend Rule 229 to revise the: (1) Execution guarantee applicable to PACE market and marketable limit orders [10] over 599 shares; (2) out-of-range protection provisions; (3) execution price for partial round lots; and (4) organizational and miscellaneous provisions.

(i) Execution Guarantees

The Exchange proposes to amend the execution guarantee applicable to market and marketable limit orders greater than 599 shares.[11] Currently, pursuant to the first paragraph of Rule 229.05, market orders up to 599 shares are stopped at the PACE Quote at the time of entry of such orders into the system (''Stop Price''), regardless of the size of the PACE Quote, and are 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 at an improved price within the 15 second window, the order will be automatically executed at the Stop Price.[12] Moreover, the second paragraph of Rule 229.05 provides that, subject to these procedures (*i.e.*, the procedures outlined in the first paragraph of Rule 229.05), the specialist may voluntarily

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[14] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 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, Special Counsel, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated April 3, 1997 (''Amendment No. 1'').

[4] Amendment No. 2 clarifies the operation of the proposed rule change by revising the fourth example in Section I, B ''Proposed Changes,'' *infra*. *See* letter from Philip H. Becker, Senior Vice President, Chief Regulatory Officer, Phlx, to James T. McHale, Special Counsel, OMS, Division, Commission, dated April 17, 1997 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 38544 (April 24, 1997), 62 FR 24525 (May 5, 1997).

[6] Amendment No. 3 provides that specialists may change their applicable execution guarantee from the First Guarantee to the Second Guarantee (defined herein) and vice versa, upon one day's notice. In addition Amendment No. 3 revises Supplementary Materials .05 and .10(a)(i) to Rule 229 to clarify that where the customer order is greater than the size of the PACE Quote (defined herein), such order will receive an execution under the First Guarantee, unless the specialist agrees to the Second Guarantee. *See* Letter from Philip H. Becker, Senior Vice President, Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, OMS, Division, Commission, dated May 23, 1997 (''Amendment No. 3'').

[7] *See* Securities Exchange Act Release Nos. 23630 (September 16, 1986) (SR–Phlx–86–30); and 25716 (May 19, 1988) (SR–Phlx–87–30).

[8] *See* 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. *See* Amendment No. 1, *supra* note 3.

[9] *See* 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).

[10] 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. Marketable limit orders are defined by the Exchange as orders to buy or sell a stated amount of a security at a specified price, which is received at a time when the market is trading at or better than the specified price. *See* letter from Philip H. Becker, Senior Vice President and Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, OMS, Division, Commission, dated July 25, 1997 (''Second Phlx Letter'').

[11] The Exchange is not amending the automatic execution guarantee applicable to orders fro 599 shares or less. Therefore, as currently provided in Supplementary Materials .05 and .10(a) of Rule 229, if an order is for 599 shares or less, it will continue to be automatically executable at the PACE Quote, regardless of the size of the PACE Quote. 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 Assisted Execution System (''ITS/CAES'') quote, as appropriate.

[12] If the PACE Quote at the time of order entry into the system reflects a ⅛ point spread between the best bid and offer, that order will be executed immediately without the 15 second delay. In a separate rule filing, the Exchange has proposed to modify POES, increasing the execution delay from 15 to 30 seconds.*See* Securities Exchange Act Release No. 38864 (July 23, 1997) (SR–Phlx–97–32).

agree to execute market orders greater than 599 shares. Thus, market orders over 599 shares that a specialist voluntarily agrees to accept for automatic execution 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.

Limit orders are governed by separate provisions in Rule 229, namely Supplementary Materials .09 and .10. Currently, round-lot limit orders up to 599 shares and the round-lot portion of partial round-lot (''PRL'') orders up to 599 shares which are entered at the PACE Quote are executed at the PACE Quote. This automatic execution guarantee for marketable limit orders up to 599 shares is unaffected by this proposal, apart from being reorganized into new sub-paragraph (i) of Rule 229.10(a). In addition, like market orders, currently specialists may voluntarily agree to automatically execute marketable limit orders greater than 599 shares, and such orders are entitled to the same execution at the PACE Quote, regardless of the size of the PACE Quote.[13]

The Exchange is now proposing to adopt new standards (reflected in Rules 229.05 and 229.10(a)(i)) governing the automatic execution of market and marketable limit orders over 599 shares by specialists. Specifically, where a specialist voluntarily agrees to automatically execute market or marketable limit orders greater than 599 shares, an order will be automatically executable at the PACE Quote, if it is: (a) Greater than 599 shares; (b) less than or equal to the size of the specialist's maximum 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 will be guaranteed 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,[14] in accordance with Rule 229.10(b) (''the First Guarantee''). In addition, for orders greater than the size of the PACE Quote, the specialist may guarantee an automatic execution at the PACE Quote, up to the size of the order (provided that it is less than or equal to the specialist's maximum automatic execution guarantee size), regardless of the size of the PACE Quote (''the Second Guarantee''). The First and Second execution guarantees are proposed to be added to Rule 229.05 for market orders and Rule 229.10(a)(i) for marketable limit orders. Both guarantees can voluntarily be elected by the Phlx specialist.

Rule 229.07(b) will continue to apply to market orders greater than 599 shares where the specialist has not agreed to provide automatic executions. The proposal would amend Rule 229.07(b), however, to provide that where the specialist has not agreed to automatically execute market orders greater than 599 shares, an order greater than 599 shares is manually executed, and entitled to a professional execution pursuant to Rule 229.10(b) and other applicable rules of the Exchange.[15] While these PACE-delivered orders are not subject to the execution parameters set forth in Supplementary Material .05 to the Rule, the rule change would make clear that they are subject to the professional execution standard set forth in Rule 229.10(b).[16]

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 Exchange ''PCX''), 500 shares (New York Stock Exchange ''NYSE''), and 500 shares (CHX), for an aggregate total size[17] of 2,000 shares and the specialist's maximum 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 PCX) bid (1,000 shares) and less than the specialist's maximum 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 (PCX 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 maximum automatic execution guarantee, and the entire 3,000 share order receives a professional execution.[18] 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 maximum guarantee size, regardless of the size of the PACE Quote (*i.e.* the Second Guarantee). For instance, where the specialist's maximum automatic execution guarantee is 2,500 shares and the PACE Quote bid is composed of 1,000 shares (PCX), 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.

The Exchange believes that 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 (''Display Rule'')[19] 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.[20] Other changes in

[13] *See* Second Phlx Letter, *supra* note 10.

[14] Currently, 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 and 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.

[15] Limit orders greater than 599 shares, where the specialist has not agreed to automatically execute orders over 599 shares, also will receive a professional execution pursuant to Rule 229.10(b). Telephone Conversation on July 16, 1997, between Edith Hallahan, Director and Special Counsel, Regulatory Services, Phlx, and James T. McHale, Special Counsel, OMS, Division, Commission.

[16] *See also* Section I, B, iv, *infra.*

[17] 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.

[18] There is no guarantee up to the PACE Quote size, because the customer order size is greater than the specialist's maximum automatic execution guarantee. *See* Amendment No. 2, *supra* note 4.

[19] 17 CFR 240.11Ac1–4

[20] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Rule 11Ac1–4 Adopting

Continued

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 Rule 11Ac1–4 Adopting Release, as well as in the Market 2000 Study.[21]

With respect to 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, 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 limits automatic execution to orders less than or equal to the size of the displayed ITS/BBO or NBBO, as the case may be.[22] Thus, the effect of the Exchange's proposal is to similarly consider the PACE quote size for certain order sizes, consistent with other systems.

(ii) Out-of-Range Protection

The Exchange also is proposing to amend the Rule's provisions respecting out-of-range executions. Currently, pursuant to Supplementary Material .07(a) of the Rule, member organizations which enter market orders (up to 599 shares) after the opening may elect to have such orders executed (i) in accordance with the procedures set forth in Rule 229.05, or (ii) if such execution price would be outside the NYSE high-low range for the day, manually at or within the NYSE 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 automatic execution, if so elected by the PACE order entry firm. This is referred to as out-of-range protection, a long-standing feature of the PACE System.[23]

Under the proposal, the limitation to orders less than 599 shares in Supplementary Material .07(a) respecting market orders will be deleted. In addition, the Exchange is 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.[24] 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. The Exchange notes that out-of-range protection is common to regional exchange systems.[25]

(iii) Execution of Partial Round-Lot Orders

The Exchange also proposes to amend the Rule's provisions respecting the execution guarantee applicable to PRL orders. Currently, Supplementary Material .07(b) of the Rule 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 addition, Rule 229.07(b) provides 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 last round-lot portion is executed. A similar provision appears in Supplementary Materials .09 and .10(c) to Rule 229. 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 the proposed execution procedure should, in most situations, result in a better execution price for the customer, because later round-lots are generally executed at inferior prices, as the market responds to the prior execution.[26]

(iv) Organizational and Miscellaneous Provisions

Lastly, the Exchange is also proposing to reorganize Rule 229 by separating marketable limit orders[27] 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).

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[28] Specifically, the Commission believes that the proposed rule change is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[29]

The proposed rule change would amend Rule 229.05 and Rule 229.10(b)(i), respectively, to provide that 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, if it is: (a) Greater than 599 shares; (b) within the specialist's maximum automatic execution guarantee; and (c) less than or

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), 62 FR 1385 (January 10, 1997) (revising effective date to January 20, 1997).

[21] *See* Rule 11Ac1–4 Adopting Release at 8 and note 12, *supra* note 20.

[22] *See* CHX, Article XX, Rule 37(b)(11), which states that notwithstanding anything contrary in Rule 37, no market or marketable limit order is automatically executed if it is greater than he size of the ITS/BBO (equivalent to the PACE Quote) or NBBO (the national best bid or offer disseminated pursuant to Rule 11Ac1–1 under the Exchange Act), as the case may be. In addition, much like the First Guarantee, if a customer order routed through the MAX system exceeds the size of the ITS/BBO or NBBO, the specialist will execute the order manually at the price of the ITS/BBO or NBBO up to the size of the ITS/BBO or NBBO, with the balance of the order remaining as an ''open order'' for execution. Telephone conversation on July 9, 1997, between J. Craig Long, Esq., Foley & Larder, and James T. McHale, Special Counsel, OMS, Division, Commission.

[23] *See e.g.*, Securities Exchange Act Release No. 28629 (November 20, 1990) (SR–Phlx–90–19).

[24] Limit orders for 600 shares or more are covered by the out-of-range protection provision in Rule 229.10(b)(4).

[25] *See e.g.*, CHX, Article XX, Rule 37(a)(6), (b)(11) and (e)(6), which provide for stopping such orders.

[26] *See* Letter from Edith Hallahan, Director and Special Counsel, Regulatory Services, Phlx, to Michael Walinskas, Senior Special Counsel, OMS, Division, Commission, dated June 25, 1997 (''First Phlx Letter'').

[27] The provisions respecting non-marketable limit orders would be reorganized as sub-paragraph (ii) but otherwise remain unchanged.

[28] 15 U.S.C. 78f(b)(5).

[29] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

equal to the size of the PACE Quote.[30] Under this First Guarantee, orders greater than the size of the PACE Quote would be guaranteed 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). In addition, for orders greater than the size of the PACE Quote, the specialist may guarantee an automatic execution at the PACE Quote price, up to the size of the order (provided it is less than or equal to the specialist's maximum automatic execution guarantee), regardless of the size of the PACE Quote (the Second Guarantee).

The Commission believes that limiting the automatic execution guarantee applicable to PACE market and marketable limit orders over 599 shares to the size of the PACE Quote (unless the specialist agrees to the second Guarantee) is reasonable and consistent with the Act. The Commission recognizes that to the extent a customer order exceeds the size of the PACE Quote, Phlx specialists must execute the order as principal, thus taking on additional risk. A specialist may reasonably determine that orders that are greater in size than reflected in the PACE Quote justify separate pricing. The First Guarantee will provide the specialist with the flexibility of electing such a limited guarantee. This increased flexibility should help to encourage specialist participation in providing at least a limited guarantee for orders over 599 shares. The First Guarantee also serves to ensure that customers receive the best price that is available in the intermarket system in the stock, up to the size of the PACE Quote. The Second Guarantee serves to provide the specialist with the discretion to accept the increased risk associated with guaranteeing execution of orders at the PACE Quote when such orders exceed the size that the PACE Quote is based upon. The Commission also notes that conditioning automatic execution at the PACE Quote price on the displayed size of the PACE Quote is consistent with the rules of other regional markets.[31] Finally, the Commission finds that permitting specialists to change from the First Guarantee to the Second Guarantee and vice versa with one day's notice to PACE users is reasonable.[32]

The Commission believes that the amendment to the out-of-range guarantee for market and marketable limit orders also is consistent with the Act.[33] Specifically, providing that all market orders are subject to out-of-range protection, as opposed to only those market orders up to 599 shares as is currently the case, provides member organizations with more flexibility by allowing them to elect out-of-range protection for all market orders within the parameters of the specialists guarantee. This, in turn, should benefit investors by providing out-of-range protection to larger orders and should help the Exchange compete for order flow. Moreover, the Commission believes that adopting an out-of-range protection provision for limit orders not currently covered by such a provision (*i.e.*, orders less than 600 shares) is reasonable and consistent with the Act. Finally, the Commission notes that while neither specialists nor member organizations are required under the federal securities laws to provide out-of-range protection, allowing out-of-range protection to all orders is consistent with the Act.

The Commission finds the change in execution of partial round-lot orders to be consistent with the Act. Specifically, the proposal amends Rules 229.07(b), 229.09, and 229.10(c) to provide that in the case of a PRL order, the round-lot portion 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, not the last 100 shares, as the rules currently provide. The Commission believes that this approach should generally provide superior PRL order executions. For example, if the market for XYZ stock is initially $20 \times 20\frac{1}{8}$, and a PACE market order to buy 650 shares is received, the specialist intending to execute the first 300 shares at $20\frac{1}{8}$, would generally execute 350 shares at that price, including the 50 share odd-lot in the first execution.[34] Thereafter, if the market were to become $20\frac{1}{8} \times 2\frac{1}{4}$, the specialist would execute the remaining 300 shares at $20\frac{1}{4}$. The Rule does not require that the odd-lot portion be executed with the first round-lot, but encourages it by requiring that the odd-lot portion receive the same price as the first round-lot. Accordingly, these odd-lots should receive a more prompt execution, and in most situations a better price, because later round lots are generally executed at inferior prices, as the market responds to the prior execution.[35]

Finally, the Commission believes that the organizational changes made to Rule 229, separating marketable limit orders and clarifying Supplementary Material .10(a), should help clarify operation of the Rule. Moreover, the amendment to Rule 229.07(b), providing that market orders which the specialist has not agreed to accept for automatic execution may nevertheless be delivered through the PACE system, clarifies that such orders are to be executed in accordance with Rule 229.10(b),[36] as well as other applicable rules of the Exchange. The Commission believes that this should further encourage the delivery of customer orders through the PACE system, and, as such, is consistent with Section 11A of the Act,[37] and paragraph (a)(1) thereunder, which encourages the use of new data processing and communications techniques that create the opportunity for more efficient and effective market operations. Accordingly, the Commission finds that this change is appropriate and consistent with the Act.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 3 states that specialists, after their initial determination to provide a manual or automatic guarantee (*i.e.* the First or Second Guarantee), may change from

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[30] Consistent with the existing provisions of Rules 229.05 and 229.10(a), if an order is for 599 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.

[31] For example, the Chicago Stock Exchange MAX system limits automatic execution to orders less than the size of the ITS/BBO. *See supra* note 22.

[32] *See* Amendment No. 3, *supra* note 6.

[33] Out-of-range protection allows members organizations entering orders after the opening to elect to have such orders executed automatically at the PACE Quote, or if such execution price would be outside the NYSE high-low range for the day, manually at or within the NYSE high-low range of the day.

[34] This example assumes that the specialist has not agreed to automatically execute market or marketable limit orders greater than 599 shares. If the incoming order is for 599 shares or less, it is executable in full at the PACE quote, such that generally it would not be executed at more than one price and thus would not trigger this provision. *See* First Phlx Letter, *supra* note 26.

[35] *Id*. The Commission notes that intervening market events could cause the market to move in the opposite direction (*i.e.* in the customer's favor). In the above example, after the first execution at $20\frac{1}{8}$, the market could become $19\frac{7}{8} \times 20$, such that the remainder of the order would be executed at 20, a better price. Under the new procedure, executing the odd-lot portion at the first price is less favorable to the customer. The Commission believes, however, that basing the odd-lot execution price on the execution price for the first 100 shares generally will provide a more favorable execution for customer orders.

[36] The Commission also finds that the addition of general standards (*i.e.* that all orders subject to Rule 229.10(b) be executed "consistent with prevailing market conditions, fair and orderly markets and other applicable Exchange rules") strengthens the language of the Rule. The additional language clarifies, for example, that the rules of priority, parity and precedence apply to PACE orders.

[37] 15 U.S.C. 78k–1

one guarantee to the other, effective the next day. The Commission finds that this is a reasonable approach and strikes an appropriate balance between the needs of specialists to change their guarantee in a moving market, and the needs of member organizations to know which guarantee applies. Amendment No. 3 also amends the text of Rules 229.05 and 229.10(a)(i), respectively, to clarify that where the specialist has voluntarily agreed to automatically execute market and marketable limit orders greater than 599 shares and 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 (the First Guarantee), provided that the specialist may guarantee an automatic execution at the PACE Quote up to the entire size of the specialist's automatic execution guarantee (the Second Guarantee). The Commission finds this language strengthens the proposals by clarifying that unless the specialist specifically elects to provide the Second Guarantee, the First Guarantee will be in effect. The Commission also notes that no comments were received on the original Phlx proposal, which was subject to the full 21-day comment period. Therefore, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 3 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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, N.W., Washington, D.C. 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 August 28, 1997.

For the foregoing reasons, the Commission finds that the Phlx's proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[38] that the amended proposed rule change (SR–Phlx–97–11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–20838 Filed 8–6–97; 8:45 am]

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[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2577]

Shipping Coordinating Committee; Subcommittee for the Prevention of Marine Pollution; Notice of Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on Tuesday, September 9, 1997, at 9:30 a.m. in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the fortieth session of the Marine Environment Protection Committee (MEPC 40) and the agenda items of the Conference on the Prevention of air pollution from ships (the Conference) of the International Maritime Organization (IMO). MEPO 40 and the Conference will be held in conjunction with each other from September 15–26, 1997. Proposed U.S. positions on the agenda items for MEPC 40 and the Conference will be discussed.

The major items for discussion for MEPC 40 will begin at 9:30 a.m. and include the following:

a. Bulk liquids and gases;

b. Flag State implementation;

c. Identification and protection of Special Areas and Particularly Sensitive Sea Areas;

d. Adoption of amendments to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), Annex I (regulation 10 to make the North West European waters a special area under Annex I and regulation 25A on intact stability of double hull tankers);

e. Harmful aquatic organisms in ballast water;

f. Harmful effects of the use of anti-fouling paints for ships;

g. Implemenation of the Oil Pollution Preparedness Response and Cooperation (OPRC) Convention and resolutions; and

h. Irradiated Nuclear Fuel Code related matters.

The major items for discussion for the Conference will begin at 11:00 a.m. and include the following;

a. Consideration and adoption of the Protocol of 1997 to amend MARPOL 73/78 by adding a new Annex VI on controlling air pollution from ships; and

b. Consideration of adopting resolutions banning the use of perflourocarbons on ships and other related matters.

Members of the public may attend these meetings up to the seating capacity of the room. For further information or documentation pertaining to the SPMP meeting, contact Lieutenant Commander Ray Perry, U.S. Coast Guard Headquarters (G–MSO–4), 2100 Second Street, SW, Washington, DC 20593–0001; Telephone (202) 267–2714.

Dated: July 28, 1997.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

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DEPARTMENT OF STATE

[Public Notice 2676]

Director General of the Foreign Service and Director of Personnel; State Department Performance Review Board Members (At Large Board)

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Executive Resources Board of the Department of State has appointed the following individuals to the State Department Performance Review Board (At Large Board) register.

Robert B. Dickson, Executive Director, Bureau of Administration, Department of State

Linda Jacobson, Assistant Legal Adviser for Diplomatic Law and Litigation, Office of the Legal Adviser, Department of State

Katherine Lee, Special Assistant to the Associate Director for Management, United States Information Agency

James P. Timbie, Senior Advisor, Office of the Under Secretary for Arms Control and International Security Affairs, Department of State

Ruth A.Whiteside, Deputy Director, Foreign Service Institute, Department of State