

committees shall consult with its corresponding quality of markets committee on all matters which are to be presented to the Board of Governors.

The text of the proposed rule change is set forth in full in Exhibit B to the filing.

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. 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

Phlx By-Law Article X, Sections 10-16, 10-17 and 10-19 set forth the charters of the Exchange's various trading floor standing committees. The proposed amendments specify that each of the trading floor standing committees shall consult with its respective quality of markets on all matters of policy and all matters which are to be presented to the Board of Governors. The proposed amendments are intended to foster sharing of views on policy and other matters between the various trading floor standing committees (Floor Procedure, Foreign Currency Options and Options) and corresponding quality of markets committees. The intended sharing of views on all policy matters is designed to bring the perspectives of the non-industry representatives of the various quality of markets committees to matters that may be referred to the Board of Governors by the various trading floor standing committees.

The proposed rule change is consistent with Section 6 of the Act³ in general, and in particular, with Section 6(b)(5)⁴ in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market

system, as well as to protect investors and the public interest.

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** 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 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, including whether the submission is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Phlx. All submissions should refer to File No. SR-Phlx-97-62 and should be submitted by April 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-6762 Filed 3-16-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39740; File No. SR-Phlx-98-10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Automatic Price Improvement for Certain PACE Orders

March 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on, February 10, 1998, 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, pursuant to Rule 19b-4 of the Act, proposes to amend Rule 229, Philadelphia Stock Exchange Automatic Communication and Execution ("PACE") System,³ Supplementary Material .07(c), Double-up/Double-down Situations, to adopt a new automatic price improvement initiative for PACE orders. Specifically, specialists could voluntarily choose to provide automatic price improvement of $\frac{1}{16}$ to eligible orders where the PACE Quote⁴ is $\frac{1}{8}$ or greater, or $\frac{3}{16}$ or greater. Eligible orders would be automatically executable market and marketable limit orders⁵ in New York Stock Exchange or American

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ PACE is the Exchange's automatic order routing and execution system for securities on the equity trading floor.

⁴ The PACE Quote consists of the best bid/offer among the American, Boston, Cincinnati, Chicago, New York, Pacific and Philadelphia Stock Exchanges as well as the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES"). See Phlx Rule 229.

⁵ A market order is an order to buy or sell a stated amount of a security at the best price obtainable when the order is received. A marketable limit order is an order 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.

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(5).

⁵ 17 CFR 200.30-3(a)(12).

Stock Exchange listed securities received through PACE beginning at 9:45 A.M., in sizes of 599 shares or less (or the specialist's higher automatic execution guarantee size).

However, the proposed automatic price improvement feature would not price improve in certain situations. First, where a buy order would be improved to a price less than the last sale or a sell order would be improved to a price higher than the last sale, the order is not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote. Similarly, where a buy order would be improved to the last sale price which is a down tick, or where a sell order would be improved to the last sale price which is an up tick, the order is also not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote.

Certain limitations regarding automatic price improvement are similar to the current double-up/double-down program.⁶ For instance, odd-lot orders would not be eligible for the proposed automatic price improvement.⁷ Nor would it be available where the execution price before or after the application of automatic price improvement would be outside of the primary market high/low range of the day. Further, only automatically executable orders would be eligible for automatic price improvement.⁸

Under the proposal, specialists may choose whether to participate in automatic price improvement, as opposed to the mandatory manual double-up/double-down price protection of Rule 229.07(c)(ii).⁹ If a

specialist elects to provide automatic price improvement, they must further determine whether to price improve in $\frac{1}{8}$ or greater markets, or $\frac{3}{16}$ or greater markets.¹⁰ Necessarily, specialists who choose price improvements in $\frac{1}{8}$ wide markets automatically agree to price improve in $\frac{3}{16}$ or greater markets. However, although choosing automatic price improvement in $\frac{3}{16}$ or greater markets obviously does not trigger automatic price improvement in $\frac{1}{8}$ wide markets, the manual double-up/down price protection provision may be triggered, such that eligible orders would be stopped in $\frac{1}{8}$ wide markets; in this situation, no automatic price improvement would be given, even in double-up/down situations.¹¹

Although the proposed automatic price improvement proposal will be voluntary, all specialists will still be required to provide manual double-up/double-down tick price protection to eligible orders ($\frac{1}{8}$ markets). This feature provides that eligible orders will be stopped at the PACE Quote when received for an opportunity for price improvement. Automatically executable market orders not eligible for double-up/down price protection will continue to be stopped for the 30 second POES window, and then automatically executed.¹²

The new automatic price improvement feature will replace the current automatic double-up/double-down price improvement feature of Rule 229.07(c)(i). Thus, the Exchange is

this feature stops orders to provide an opportunity for manual price improvement in double-up/down situations.

¹⁰ The specialist's choice to provide automatic price improvement, select $\frac{1}{8}$ or $\frac{3}{16}$ markets, establish an order size maximum and switch between the automatic and manual features may be changed, effective the next day. Member organizations entering PACE orders would be notified of such changes.

¹¹ A double-up/double-down situation is defined as a trade that would be at least: (i) $\frac{1}{4}$ (up or down) from the last regular way sale on the primary market; or (ii) $\frac{1}{4}$ from the regular way sale that was the previous intra-day change on the primary market.

¹² See Phlx Rule 229.05 and Securities Exchange Act Release No. 39275 (October 8, 1997), 62 FR 54147 (October 17, 1997) (SR-Phlx-97-32). Rule 229.05 provides that round-lot markets orders up to 500 shares and partial round-lot ("PRL") market orders of up to 599 shares, which combine a round-lot with an odd-lot, are stopped at the PACE Quote at the time of their entry into PACE ("Stop-Price") for a 30 second delay to provide the specialist with an opportunity to effect price improvement when the spread between the PACE Quote exceeds $\frac{1}{8}$ of a point. This feature is known as the Public Order Exposure System ("POES") window. Further, market orders for more than 599 shares that a specialist voluntarily has agreed to execute automatically also are entitled to participation in POES. If orders eligible for POES are not executed within the POES 30 second window, the order is automatically executed at the Stop Price.

proposing to retitle Rule 229.07(c) as "Price Improvement for PACE Orders." Further, the Exchange is proposing to delete the term "double-up/double-down" when paired with automatic price improvement throughout the Rule to reflect that automatic price improvement will no longer be limited to double-up/double-down situations. The definition of a double-up/double-down situation is thus being moved from Rule 229.07(c)(i)(A) to (c)(ii). The language relating to $\frac{1}{4}$ wide markets is also proposed to be deleted and replaced with the specialist's choice of $\frac{3}{16}$ or $\frac{1}{8}$ as the minimum market width to activate automatic price improvement; furthermore, price improvement of $\frac{1}{8}$ will be replaced with $\frac{1}{16}$. The language creating an exception to automatic double-up/double-down price improvement better than the last sale will be deleted and replaced with reference to the two situations where an order would not receive the new, proposed automatic price improvement; such orders would be automatically executed at the PACE Quote. Lastly, Rule 229.10(a) would be amended to cover marketable limit orders.

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

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As stated above, PACE is the Exchange's automated order routing and execution system on the equity trading floor. PACE accepts orders for automatic or manual execution in accordance with the provisions of Rule 229, which governs the PACE System and defines its objectives and parameters. The PACE Rule establishes execution parameters for orders depending on type (market or limit), size and the guarantees offered by specialists.

⁶ Securities Exchange Act Release No. 39548 (January 13, 1998), 63 FR 3596 (January 23, 1998) ("Double-Up/Double-Down Order").

⁷ The paragraph concerning odd-lots is being moved from Rule 229.07(c)(i)(B) to (c)(i)(C). Respecting manual price protection, odd-lot orders are specifically addressed in Rule 229.07(c)(ii).

⁸ For example, orders exceeding the specialist's automatic execution guarantee size would not be eligible, because the feature depends on automatically improving orders guaranteed a certain automatic execution price.

⁹ Specifically, where the specialist does not agree to provide automatic double-up/down price improvement in a security, in any instance where the bid/ask of the PACE Quote is more than $\frac{1}{8}$, beginning at 9:45 A.M., the specialist must provide manual double-up/down price protection to all customers and all eligible orders in a security. The manual double-up/down price protection feature causes eligible market and marketable limit orders of 599 shares or less in New York Stock Exchange or American Stock Exchange listed securities received through PACE in double-up/down situations to be stopped at the PACE Quote at the time of entry into PACE. Manual double-up/down price protection does not provide an automatic execution or automatic price improvement. Instead,

Currently, paragraph (c)(i), Automatic Double-up/Double-down Price Improvement, states that where the specialist voluntarily agrees to provide automatic double-up/double-down price improvements to all customers and all eligible orders in a security, in any instance where the bid/ask of the PACE Quote is $\frac{1}{4}$ or greater, market and marketable limit orders in New York Stock Exchange or American Stock Exchange listed securities received through PACE in double-up/double-down situations for 599 shares or less shall be provided with automatic price improvement of $\frac{1}{8}$, beginning at 9:45 A.M. A specialist may also voluntarily agree to provide automatic double-up/double-down price improvement to larger orders in a particular security to all customers under this provision.

As a further effort to champion the principle of best execution, the Exchange is proposing a more comprehensive automatic price improvement initiative. Specifically, specialists could choose to provide $\frac{1}{16}$ automatic price improvement to eligible orders in $\frac{1}{8}$ or greater markets, or $\frac{3}{16}$ or greater markets. Thus, as compared to the current automatic price improvement feature for double-up/double-down situations which is limited to $\frac{1}{4}$ wide markets or greater, the universe of orders eligible for the proposed feature would be expanded. Further, the proposal involves automatic price improvement without requiring a double-up/double-down situation. This again expands the benefits of price improvement to a larger universe of eligible orders.

Nevertheless, automatic price improvement would not occur in two situations. First, automatic price improvement would not occur to a price better than the last sale. More specifically, where a buy order would be improved to a price less than the last sale or a sell order would be improved to a price higher than the last sale, the order is not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote. The following are examples¹³ of this exception (not improving over the last sale):—

23–23 $\frac{1}{8}$
LS 23+ or —
Buy improved to $\frac{1}{16}$
Sell executed at 23
23–23 $\frac{1}{8}$
LS $\frac{1}{8}$ + or —

¹³ These examples consist of the PACE Quote, the last sale price with an up or down tick indicator, and the price at which a buy and sell order, respectively, would be executed.

Buy executed at $\frac{1}{8}$
Sell improved to $\frac{1}{16}$
23–23 $\frac{3}{16}$
LS 23+ or —
Buy improved to $\frac{1}{8}$
Sell executed at 23
23–23 $\frac{3}{16}$
LS $\frac{3}{16}$ + or —
Buy executed at $\frac{3}{16}$
Sell improved to $\frac{1}{16}$

This is similar to the current exception from automatic double-up/double-down price improvement;¹⁴ however, currently, where an improved price would be better than the last sale, the order would be stopped at the PACE Quote when received. Under this proposal, the order would be automatically executed at the PACE Quote when received.

Second, where a buy order would be improved to the last sale price which is a down tick, or where a sell order would be improved to the last sale price which is an up tick, the order is also not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote. The following are examples of the exception to automatic price improvement respecting improvement to the last sale:

23–23 $\frac{1}{8}$
LS $\frac{1}{16}$ —
Buy executed at $\frac{1}{8}$
Sell improved to $\frac{1}{16}$
23–23 $\frac{1}{8}$
LS $\frac{1}{16}$ +
Buy improved to $\frac{1}{16}$
Sell executed at 23
23–23 $\frac{3}{16}$
LS $\frac{1}{8}$ —
Buy executed at $\frac{3}{16}$
Sell improved to $\frac{1}{16}$
23–23 $\frac{3}{16}$
LS $\frac{1}{8}$ +
Buy improved to $\frac{1}{8}$
Sell improved to $\frac{1}{16}$
23–23 $\frac{3}{16}$
LS $\frac{1}{16}$ —
Buy improved to $\frac{1}{8}$
Sell improved to $\frac{1}{16}$
23–23 $\frac{3}{16}$
LS $\frac{1}{16}$ +

¹⁴ See Securities Exchange Act Release No. 39640 (February 10, 1998), 63 FR 8510 (February 19, 1998), which creates an exception where such price improvement would be better than the last sale price (for instance, a buy order would be improved to a price less than the last sale or a sell order would be improved to a price higher than the last sale); pursuant to this exception, such orders are stopped by the specialist at the PACE Quote when received, meaning that the order is guaranteed to receive at least that price by the end of the trading day.

Buy improved to $\frac{1}{8}$
Sell executed at 23
23–23 $\frac{1}{4}$
LS $\frac{1}{8}$ + or —
Buy improved to $\frac{3}{16}$
Sell improved to $\frac{1}{16}$

These exceptions are intended to cover situations where automatic price improvement may not be appropriate in light of overall market conditions. In this regard, the Exchange does not believe it is customary or appropriate to provide price improvement over the last sale price, or, in every case, to the last sale price. Price improvement generally takes the form of stopping orders, where the next sale price can benefit the stopped order; the last sale price also serves as a measure against the stop price.¹⁵ Despite these exceptions to automatic price improvement under this proposal, the Exchange believes that automatic price improvement would be afforded in a meaningful way, considering the wider breadth of eligible orders.

This proposal would result in automatic price improvement of $\frac{1}{16}$, as opposed to the current automatic double-up/double-down price improvement, which provides for $\frac{1}{8}$ price improvement. Although the amount of automatic price improvement will be less under the proposal for a particular order, the number of orders receiving price improvement of $\frac{1}{16}$ should increase, as explained above. Price improvement of $\frac{1}{16}$ recognizes that $\frac{1}{16}$ is the current minimum trading increment for PACE issues on the Exchange's equity trading floor.¹⁶ Thus, it reflects the reality of today's marketplace, including other price improvement initiatives in the industry.

Because the proposal would provide automatic price improvement, no POES window would occur, similar to the current automatic double-up/double-down price improvement provision.¹⁷ Instead, an automatic execution occurs at an improved price, with no window, timer or delay. Orders not eligible for automatic price improvement due to the two exceptions relating to the last sale price are automatically executed at the PACE Quote and not subject to the

¹⁵ In this regard, the Exchange notes that automatic price improvement on the Chicago Stock Exchange ("CHX") does not consist of price improvement over the last sale. See CHX Article XX, Rule 37.

¹⁶ See Phlx Rule 125.

¹⁷ See Double-Up/Double-Down Order, *supra* note 6, at note 10 and Securities Exchange Act Release No. 39640 (February 10, 1998), 63 FR 8510 (February 19, 1998).

POES delay. Where an order is otherwise not eligible for the proposed automatic price improvement, the POES window may apply.

Automatic price improvement will not occur where the execution price before or after the application of automatic price improvement would be outside the primary market high/low range for the day, if so elected by the entering member organization. This limitation currently appears in Rule 229.07(c)(i)(C), and has applied to both automatic double-up/double-down price improvement and manual double-up/double-down price protection.

Similarly, pursuant to paragraph (c)(iii), the provision that member organizations entering orders may elect to participate in manual double-up/double-down price protection continues to apply. However, member organizations will not have the ability to elect the proposed automatic price improvement feature.

Currently, both the automatic double-up/double-down price improvement and manual price protection features are jointly subject to the entering firm's election.¹⁸ As a result, electing these features where the specialist has not chosen automatic double-up/double-down price improvement in that security may currently cause a firm's orders to be stopped. Thus, firms who do not want their orders stopped because they prefer a prompt execution can currently elect out of both features.

Once automatic price improvement is no longer limited to double-up/double-down situations, the election for automatic price improvement will end, because the reason for allowing a firm's choice will no longer exist. Under this proposal, firms electing out of manual price protection could nevertheless receive automatic price improvement. For instance, where a specialist switches from manual to automatic price improvement for a security, the automatic feature would be activated even for firms that elected out of the manual feature. This proposal results in an assumption, and thus requirement, that all entering firms accept automatic price improvement from a participating specialist.¹⁹

The Exchange notes that the manual double-up/double-down price protection provision, which is mandatory for specialists, will continue to be subject to an election by entering

member organizations,²⁰ who may continue to prefer a prompt execution over the opportunity for price improvement. Failure to elect will result in the activation of the double-up/double-down feature for that User. Specialists continue to determine whether to provide automatic price improvement in a particular security.

The extraordinary circumstances provision currently in the Rule would also apply to the new feature, such that automatic price improvement may be disengaged in a security or floor-wide in extraordinary circumstances with the approval of two Floor Officials. In addition to fast market conditions, for purposes of this paragraph, extraordinary circumstances also include systems malfunctions and other circumstances that limit the Exchange's ability to receive, disseminate or update market quotations in a timely and accurate manner.

The Exchange has determined that, as with many PACE features and participation in the PACE System itself, automatic price improvement should be made available on a voluntary, symbol-by-symbol basis, so that specialists can determine which securities are suitable for the program.²¹ The availability of a price improvement feature benefits the specialist function, especially in high-volume securities, where stopping orders and manual intervention are time-consuming, delay execution and do not necessarily result in price improvement. The proposed feature triggers a superior result—an immediate automatic execution, with no specialist intervention or delay.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act²² in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by providing an opportunity for automatic price improvement to eligible orders. In approving the existing price improvement/protection program, the Commission noted that price improvement opportunities may

enhance intermarket competition and order execution quality.²³

The Exchange also believes that the proposal is consistent with Section 11A²⁴ of the Act, and paragraph (a)(1)²⁵ thereunder, which encourages the use of new data processing and communication techniques that create the opportunity for more efficient and effective market operations. Specifically, the proposal is consistent with the public interest and investor protection purposes of Section 11A, in that it should assure the practicability of executing customer orders in the best market as well as an opportunity for investors' orders being executed without the participation of a dealer.

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 reason 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, including whether the proposed rule change is consistent with the Act. 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

¹⁸ This election must be made for all Phlx stocks, not security-by-security. See Double-Up/Double-Down Order, *supra* note 6, at note 22.

¹⁹ The Exchange believes that it is typical of competitors' automatic price improvement initiatives not to allow an opt-out.

²⁰ A firm's election continues to apply to all Phlx stocks, not security-by-security.

²¹ Some securities are not appropriate for automatic price improvement due to, for instance, liquidity, trading patterns and volatility situations rendering it unfair for specialists to afford price improvement automatically and then manage the resulting positions. See Double-Up/Double-Down Order, *supra* note 6, at note 11.

²² 15 U.S.C. 78f(b)(5).

²³ See Double-Up/Double-Down Order, *supra* note, 6.

²⁴ 15 U.S.C. 78k-1.

²⁵ 15 U.S.C. 78k-1(a)(1).

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-PHLX-98-10 and should be submitted by April 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-6763 Filed 3-16-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39741; File No. SR-PHLX-98-03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Disputes and Floor Official Rulings

March 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 22, 1998, 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 PHLX.² 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 amend its rules by (1) replacing the current text of PHLX Rule 124, "Disputes," with new text; and (2) adopting Floor Procedure Advice ("Advice") F-27, "Floor Official Rulings—Options" and Advice F-27, "Floor Official Rulings—Equity," (together, the "Advices"), which incorporate and expand upon the provisions of proposed PHLX Rule 124 and will appear in the PHLX's Floor Procedure Advice Handbook. Proposed PHLX Rule 124(a) will allow floor officials to resolve trading disputes occurring on and relating to the trading floor if the dispute is not settled by agreement between the interested members or by a vote of members with knowledge of the transaction. In resolving trading disputes, a floor official may direct the execution of an order on the floor or adjust the transaction terms or participants to an executed order. In addition, two floor officials may nullify a transaction under certain circumstances.³ Proposed PHLX Rule 124(b) states that all floor official rulings, including rulings made pursuant to PHLX Rule 60, "Assessments for Breach of Regulations," and pursuant to the PHLX's minor rule violation enforcement and reporting plan ("minor rule plan"),⁴ are effective immediately and must be complied with promptly. Proposed PHLX Rule 124(c) states that floor officials' rulings issued pursuant to the PHLX's Order and Decorum Regulations are reviewable pursuant to PHLX Rule 60, and floor officials'

rulings issued pursuant to Floor Procedure Advices are reviewable pursuant to PHLX Rule 970. All other floor officials' rulings are reviewable pursuant to proposed PHLX Rule 124(d), which addresses trading disputes. Among other things, the proposed Advices contain a conflict of interest provision which states that a floor official should not render a decision or authorize a citation where the floor official was involved in or affected by the dispute, or in any situation where the floor official is not able to objectively and fairly render a decision. The conflict of interest provision applies to all rulings by floor officials.

Copies of the proposed rule change are available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PHLX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PHLX proposes to codify its procedures regarding floor officials' rulings by replacing the current text of PHLX Rule 124 with a new PHLX Rule 124 and adopting two Advices, which will be published in the PHLX's Floor Procedure Advice handbook.

PHLX Rule 124, as amended, will: (1) State that trading disputes not settled by the trading crowd may be referred to a PHLX floor official, define a floor official's duties, and establish procedures for reviewing floor officials' rulings in connection with trading disputes; and (2) require prompt compliance with all rulings by floor officials and establish a conflict of interest procedure applicable to all rulings by floor officials.

Proposed PHLX Rule 124(a) provides that disputes occurring on and relating to the trading floor, if not settled by agreement between the interested members, shall be settled, if practicable,

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² On March 3, 1998, the PHLX amended the filing. See Letter from Linda S. Christie, Counsel PHLX, to Yvonne Fraticelli Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated March 3, 1998 ("Amendment No. 1"). In Amendment No. 1, the PHLX modified the text of proposed PHLX Rule 124 to indicate that two options floor officials (rather than one floor official) may nullify a transaction if they determine that the transaction violated any of the following PHLX Rules: 1014, "Obligations and Restrictions Applicable to Specialists and ROTs;" 1015, "Quotation Guarantees;" 1017, "Priority and Parity at Openings in Options;" 1033, "Bids and Offers—Premium;" or 1080, "PHLX Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)." The amendment also states that two equity floor officials (rather than one floor official) may nullify a transaction if they determine that the transaction violated any of the following PHLX Rules: 110, "Bids and Offers—Precedence;" 111, "Bids and Offers Binding;" 118, "Bids and Offers

Outside Best Bid and Offer;" 119, "Precedence of Highest Bid;" 120, "Precedence of Offers at Same Price;" 126, "'Crossing' Orders;" 203, "Agreement of Specialists;" 218, "Customer's Order Receives Priority;" 229, "Philadelphia Stock Exchange Automated Communication and Execution System (PACE);" 232, "Handling Orders When the Primary Market is Not Open for Free Trading (EXP, PPS, GTX Orders);" or 455, "Short Sales." Originally, proposed PHLX Rule 124 stated that a floor official may nullify an executed order on the Exchange floor. However, two proposed Floor Procedure Advices submitted as part of the proposal indicated that nullification of a transaction requires action by two floor officials. Amendment No. 1 makes the text of proposed PHLX Rule 124 consistent with the two proposed Floor Procedure Advices by indicating that two floor officials, rather than one floor official, may nullify a transaction if the floor officials determine that the transaction violated one of the PHLX rules enumerated in the proposed Floor Procedure Advices.

³ See Amendment No. 1, *supra* note 2.

⁴ See PHLX Rule 970, "Floor Procedure Advice: Violations, Penalties, and Procedures."