

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44436; File No. SR-Phlx-2001-50]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Specific Inclusion of Trade Correction Data and Exemptive Relief Information in the Specialist Evaluations Conducted by the Options Allocation, Evaluation and Securities Committee

June 15, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 1, 2001, 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 Exchange. 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 Phlx Rule 515, Specialist Evaluations, Supplementary Material .02, Option Specialist Evaluation ("Rule 515(.02)") to specifically include trade correction data and exemptive relief information in the specialist evaluations conducted by the Options Allocation, Evaluation and Securities Committee (the "Committee").

The following is the text of the proposed rule change. New language is italicized.

#### 515 Specialist Evaluations

\* \* \* \* \*

#### Supplementary Material

.02 Options Specialist Evaluation  
The Committee shall conduct specialist performance evaluations to determine whether a specialist unit has fulfilled performance standards relating to among other things; quality of markets, observance of ethical standards and administrative responsibilities. *As part of the specialist evaluation process, the Committee will consider trade correction data and information concerning exemptive relief of each specialist unit.* Options specialist units are evaluated on the basis of questionnaires completed by floor brokers. Floor brokers shall be invited but are not required to meet with any specialist about which they have submitted negative comments and the

Committee may mediate such a meeting. To the extent possible, evaluations of specialist units shall also include an objective performance evaluation survey. The Committee may consider any relevant information in addition to the questionnaire including but not limited to the unit's and its members' regulatory history (both final disciplinary actions and minor rule plan infractions), trading data, timeliness of openings, written complaints and such other factors and data as may be pertinent. A registered specialist unit will be presumed to have performed below minimum standards if the specialist unit is rated in the bottom 10% of all specialist units in the aggregate results for the specialist evaluation questionnaire. The Committee may also presume that a specialist unit failed to meet minimum performance standards if the questionnaire or information aside from said questionnaire supports findings of a failure of the specialist unit to fulfill any of the above standards. Separate evaluations will be conducted for each quarter or contiguous half turrel in which a specialist unit conducts an operation on the trading floor, thus any reference to "specialist unit" within this rule or Rule 511(c)(2) will mean the unit as a whole or any subpart of its operation subject to evaluation. For instance, a unit which conducts a specialist operation at two separate turrets will be evaluated as XYZ specialist unit-A and XYZ specialist unit-B and a presumption of failure to meet minimum performance standards at unit A will not be determinative of whether unit B has failed to meet minimum performance standards but may be considered by the Committee.

#### 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 Exchange 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 Exchange 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 purpose of the proposed rule change is to amend Rule 515(.02) to specifically include trade correction data and exemptive relief information in the specialist evaluations conducted by the Committee.<sup>2</sup> Under Rule 515 the

Committee is responsible for conducting both routine and special evaluations of options specialist units.<sup>3</sup> Currently, Rule 515(.02) provides, in relevant part, that the Committee may consider any relevant information including, but not limited to the unit's and its members' regulatory history (both final disciplinary action and minor rule plan infractions), trading data, timeliness of openings, written complaints, and such other factors and data as may be pertinent. Although the current rule provides the Committee with discretion to consider trade data and regulatory history in the specialist review process, the proposed rule change specifically requires including trade correction data and information concerning exemptive relief in the specialist evaluation process. The current rule also provides the Committee with the discretion to consider "such other factors and data as may be pertinent."

Specialist evaluations are a factor used in the allocation of option classes to specialist units. By specifically including trade correction data and exemptive relief information in the specialist evaluations, the Committee will be better able to consider effectively specialist floor trade practices in their evaluation process. Currently, the following types of exemptive relief<sup>4</sup> are granted by the Phlx: (1) Auto-X disengagement,<sup>5</sup> (2) NBBO Feature relief,<sup>6</sup> (3) parameter relief;<sup>7</sup> (4) stop and stop limit order relief,<sup>8</sup> and (5) firm quote relief.<sup>9</sup>

The Exchange proposes to provide such exemptive relief information to the Committee. The Exchange believes that

allocating new options classes approving transfers and reallocating existing option classes.

<sup>3</sup> Under Phlx Rule 515(b), routine reviews are conducted every six months for option specialist units. Special reviews are commenced: (i) Where a specialist unit's performance in a particular market situation was so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining efficient, fair and orderly markets; (ii) where a material change in the specialist unit has occurred; (iii) within 60 days after a transfer of one or more equity books or option classes has become effective pursuant to Phlx Rule 511(d)(2); or (iv) within 90 days after a new allocation.

<sup>4</sup> The relief, when granted, permits specialists to disengage Auto-X and orders are then handled manually. Phone call between Linda Christie, Counsel Phlx, and Terri Evans, Attorney, and John Riedel, Attorney, Division of Market Regulation ("Division"), Commission (June 12, 2001).

<sup>5</sup> See Phlx Rule 1080(e) Advice A-13. The Exchange will grant only the relief provided for by the rules cited. Phone call between Linda Christie, Counsel, Phlx, and Terri Evans, Attorney, and John Riedel, Attorney, Division, Commission (June 12, 2001).

<sup>6</sup> See Phlx Rule 1080(e).

<sup>7</sup> See Phlx Rule 1014(f)(ii), Advice F-6.

<sup>8</sup> See Advice A-5.

<sup>9</sup> See Phlx Rule 1082(c).

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

<sup>2</sup> Pursuant to Phlx Rule 511(b), specialist evaluations are employed by the Committee when

excessive or inappropriate use of exemptive relief may indicate that a specialist is not fulfilling adequately the obligations of a specialist. As a result, the Exchange's Surveillance Department monitors and documents requests for such relief. Thus, the Exchange believes that exemptive relief information is relevant to the regular option specialist performance evaluations made by the Committee.

Trade corrections occur if a specialist believes that an execution was either improperly priced or executed.<sup>10</sup> In such cases, the specialist may, with floor official approval, notify the AUTOM Desk or the AUTOM trade correction.<sup>11</sup> Excessive utilization of trade corrections by a specialist may reveal a pattern of the specialist not executing at the national best bid or offer,<sup>12</sup> may demonstrate a pattern of customers obtaining inferior price than first reported, or result in trades not properly reported to the tape. Therefore, the Exchange believes that trade correction data should be considered as part of the overall mix of information considered by the Committee in its specialist evaluation.

In summary, the Exchange believes that exemptive relief and trade correction information should enable the Committee to allocated books with a more thorough understanding of each specialist unit's activities and performance on the trading floor.<sup>13</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of section 6(b)(5)<sup>15</sup> in particular, in that it is designed to perfect the mechanisms of a free and open market and a national market

system, to promote just and equitable principles of trade, and, in general, 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 burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Phlx has neither solicited nor received written comments 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 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 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, NW., Washington, DC 20549-0609.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. 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-2001-50 and should be submitted by July 16, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

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

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## DEPARTMENT OF STATE

[Public Notice #3679]

### **Notice of Meetings; United States International Telecommunication Advisory Committee (ITAC); Telecommunication Sector Committee (ITAC-T); ITAC-T U.S. Study Group A; ITAC-T U.S. Study Group D**

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee. The purpose of the Committee is to advise the Department on policy and technical issues with respect to the International Telecommunication Union.

The ITAC will meet on July 2, 2001 from 1:30 to 3:30 at the Telecommunication Industry Association (TIA) offices at 1300 Pennsylvania Avenue, NW., Suite 350 (North Tower), Washington, DC to debrief the recent ITU Council meeting.

The ITAC-T will meet July 11, 2001 at the offices of the Alliance for Telecommunications Industry Solutions (ATIS), 1200 G Street, NW., Suite 500, Washington, DC from 9:30-12:30 to continue working on the ITAC-T Guidelines.

U.S. Study Group A will meet from 9:30 to noon on July 31, 2001 and August 15, 2001 to prepare for the next meeting of ITU-T Study Group 2. The location of the July 31 meeting will be announced. The August 15 meeting will be at the Federal Communications Commission, 6 North Conference room, 445 Twelfth Street, SW., Washington, DC. Attendees should enter through the 12th St. entrance, use the North elevators to go to the sixth floor and call the receptionist (202 418-1460) from the North Elevator lobby for admittance.

The U.S. Study Group A meeting previously scheduled for August 22, 2001 is cancelled.

U.S. Study Group D will meet at the offices of the Alliance for Telecommunications Industry Solutions, 1200 G Street, NW., Suite 500, Washington, DC from 1:30 to 3:30 on July 11, 2001 to begin preparations for the next ITU-T Study Group 9 meeting.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>10</sup> See Phlx Rule 1054, Advice F-5.

<sup>11</sup> The AUTOM Desk is a help desk designed to service firms connected to the Phlx through the AUTOM system.

<sup>12</sup> Phlx clarified that excessive utilization of trade corrections by a specialist, in all cases, not just in extreme cases, may reveal a pattern of the specialist not executing at the national best bid or offer. Phone call between Linda Christie, Counsel, Phlx, Terri Evans, Attorney, and John Riedel, Attorney, Division, Commission (June 14, 2001).

<sup>13</sup> It should be noted that requests for exemptive relief and trade corrections are a normal part of everyday business at the Exchange and all other exchanges, and that in the ordinary case, such requests are entirely appropriate. The Exchange believes, however, that unusual levels of activity in these two areas by a specialist, relative to other specialists, after taking into account the market conditions for the relevant options and underlying securities, as well as market conditions at the time that such requests or corrections are made, may be an indicator of the quality of the specialist's overall performance.

<sup>14</sup> 15 U.S.C. 78f(b).

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