

of mutual access is advantageous will the exchanges employ the interim linkage procedures. The Exchange believes that the interim linkage benefits investors and provides useful experience to help the exchanges in implementing the full linkage. For these reasons, the Exchange requests an extension of the pilot program until April 1, 2002.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6(b)(5) under the Act⁷ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 for a free and open market and a national market system, 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 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 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 or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2001-107 and should be submitted by January 2, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-30654 Filed 12-11-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45129; File No. SR-Phlx-99-41]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change and Amendment Nos. 1, 2, and 3 thereto by the Philadelphia Stock Exchange, Inc. Relating to the Trading of Trust Shares

DATES: December 4, 2001.

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 November 9, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposal relating to the trading of Trust Shares. On July 10, 2000, the Exchange filed Amendment No. 1 to the proposal.³ On

October 1, 2001, the Exchange filed Amendment No. 2 to the proposal.⁴ On November 28, 2001, the Exchange filed Amendment No. 3 to the proposal.⁵ The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant partial accelerated approval to the proposal.⁶

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

The Phlx proposes to adopt additional rules and rule amendments that, if approved, would accommodate the trading of Trust Shares. Specifically, the Exchange is proposing to amend Rule 126 to provide for the crossing of block orders; Rule 119 to provide for enhanced specialist participation in Trust Shares; Rule 229 to provide for at-the-opening orders and to provide display of bids and offers in Trust Shares; Rule 703 to establish a minimum net capital requirement for specialists in Trust Shares; and Rule 203 to give precedence to at-the-opening orders and other market orders at opening.⁷ Amendment No. 2 replaces the original filing and Amendment No. 1 in their entirety. A list of proposed provisions that the Exchange proposes to establish or amend, is set forth below, with the name of the pertinent rule noted. This is followed by proposed rule text. Proposed new language is in italics; proposed deletions are in brackets.

(December 13, 2000), 65 FR 80976 (December 22, 2000).

⁴ See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated September 28, 2001 ("Amendment No. 2"). Amendment No. 2 replaced Amendment No. 1 in its entirety. Amendment No. 2, among other things, omits provisions in the original proposal relating to the establishment of Registered Equity Market Makers to trade Trust Shares.

⁵ See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated November 28, 2001 ("Amendment No. 3"). Amendment No. 3 made certain technical changes to the amended rule proposal.

⁶ The Exchange requested accelerated approval of all portions of the proposal except those that deal with guaranteed specialist participation.

⁷ Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Steven Johnston, Special Counsel, Division, Commission on October 2, 2001 (clarifying that proposed changes to Rules 229 would apply to certain other securities as well as Trust Shares.)

⁷ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Nandita Yagnik, Attorney, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 7, 2000 ("Amendment No. 1"). Amendment No. 1 replaced the original proposal in its entirety. The original proposal contained provisions related to the listing of Trust Shares. These provisions do not appear in Amendment No. 1, but were filed in a separate rule proposal, File No. SR-Phlx-00-54. See Securities Exchange Act Release No. 43717

Rule provision	Name of rule
Rule 119(g)	Enhanced Specialist Participation for Trust Shares.*
Rule 126(f) and (g).	Crossing Orders.*
Rule 203	Agreement of Specialists.
Rule 229	PACE.
Rule 703	Financial Responsibility and Reporting.*

*These provisions would apply only to Trust Shares.

Rule 119 Precedence of Highest Bid

Enhanced Specialist Participation for Trust Shares

(g) When the registered specialist in Trust Shares is on parity with a controlled account as defined below, in accordance with Exchange Rules 119 and 120, the specialist is entitled to receive 30% of the initiating order, except in the following circumstances:

(1) where there is one controlled account on parity, the specialist is entitled to receive 60% of the initiating order; or

(2) where there are two controlled accounts on parity, in which case the specialist is entitled to receive 40% of the initiating order.

Further, no customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist. For purposes of this provision, a controlled account includes any account controlled by or under common control with a member broker-dealer. Customer accounts are all other accounts.

Rule 126 "Crossing Orders"

* * * * *

Supplementary Material:

* * * * *

(f) When a member has an order to buy and an order to sell an equivalent amount of the same Trust Share, and both orders are of 25,000 Trust Shares, and both orders are of 25,000 Trust Shares or more and are for the accounts of persons who are not members or member organizations, the member may "cross" those orders at a price at or within the prevailing quotation. The member's bid or offer shall be entitled to priority at such cross price, irrespective of pre-existing bids or offers at that price. The member shall follow the crossing procedures of Rule 451(d), and another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must

trade with all other market interest having priority at that price before trading with any part of the cross transaction, in whole or in part, at the cross price. A transaction effected the cross price in reliance on this Supplementary Material (f) shall be printed as "Stopped Stock"

(g) Orders to cross 25,000 shares or more Trust Shares, where one or both sides of such cross is for the account of a member or member organization, will be permitted to establish precedence based on size so long as the orders are represented at the post when a sale removing all bids and offers from the Floor takes place. Once the precedence of such orders of 25,000 Trust Shares or more has been established, the broker handling the cross must then bid and offer the security in accordance with Rule 451.

Rule 203 Agreement of Specialists

* * * * *

(e)(i) At an opening, all market orders (whether entrusted to or left with the specialist or represented by a broker or brokers in the Trading Crowd) including at the opening market orders, shall have precedence over limit orders and shall be executed at one price.

(ii) In connection with an opening:

(A) A limited price order to buy which is at a higher price than the price at which the security is to be opened, and a limited price order to sell which is at a lower price than the price at which the security is to be opened, are to be treated as market orders.

(B) A market order to sell short is not to be treated as other market orders, but is to be treated as a limited price order to sell at the price of the first permissible short sale. A limited price order to sell short which is at a lower price than the price at which the security is to be opened, is to be treated as a limited price order to sell at the price of the first permissible short sale. Such orders are to be treated as market orders only if the opening price is higher than the first permissible short sale price.

Rule 229 Philadelphia Stock Exchange Automated Communication and Execution System

* * * * *

Commentary .01

Member organizations wishing to participate in PACE may send to the Philadelphia trading floor market, [and] limit, and at-the-opening orders up to the maximum number of shares in securities traded under PACE as shall be fixed by the Exchange from time to time. All orders in eligible securities shall be

executed in whole or in part on a first in first out basis. An at-the-opening order is a market, or limited price order which is to be executed on the opening trade or not at all, and any such order or the portion thereof not so executed is to be treated as cancelled.

* * * * *

Commentary .15

Orders to which special conditions are attached may be accepted under PACE. The following are the types of orders which will be accepted under PACE:

All or none
Do not increase
Do not reduce
Limit
Market
Open (GTC, day, etc.)
Round-lot, odd-lot, partial round-lot
Stop
Stop limit
With or without
At-the-opening order

* * * * *

Commentary .20

A specialist is responsible for the visibility to the trading crowd of screen displaying the bids and offers for Trust Shares.

Rule 703 Financial Responsibility and Reporting

(a) Financial Responsibility Standards.—Each member organization and foreign currency option participant organization effecting securities transactions shall comply with the capital requirements set forth below:

* * * * *

(v) An assigned Specialist in Trust Shares, as defined in Rule 803(i), that are listed on the Exchange, shall be required to maintain a minimum of \$1,000,000 in net capital. The assigned Specialist shall immediately inform the Examinations Department upon failure to be in compliance with such requirement. The Exchange may waive the financial requirements of this Rule in unusual circumstances.

(vi) a member organization or foreign currency option participant organization shall promptly notify the Exchange if it ceases to be in compliance with the net capital requirements of SEC Rule 15c3-1 and/or the provisions of paragraphs (a)(iii) and (a)(iv) above.

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

In its filings 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

On November 8, 1999 the Exchange submitted to the Commission a proposal to adopt new rules and rule amendments to accommodate the trading of Trust Shares, securities that represent interests in a unit investment trust operating on an open end basis and holding a portfolio of securities.⁸ The rule amendments deal with the manner in which Trust Shares are expected to trade.

PACE. The Exchange is proposing amendments to Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System ("PACE"). PACE is the Exchange's automatic order routing and execution system on the equity trading floor. PACE accepts orders for manual and automatic execution in accordance with the provisions of Rule 229, which governs PACE and defines its objectives and parameters. The Exchange proposes to amend sections .01 and .15 of the Supplementary Material accompanying Rule 229 to provide for an at-the-opening order for the trading of securities accepted over PACE. An at-the-opening order would be defined as a market or limited price order which is to be executed on the opening trade in a security or not at all, with any such order (or the portion thereof) not so executed to be cancelled.⁹ This order type is particularly important for retail investors, institutions, and professional traders who may require execution at the opening price to fulfill their special timing or liquidity needs.

Single Price Opening. The Exchange is proposing to amend Rule 203 to

codify single price opening for Trust Shares and other securities.¹⁰ Proposed subsection (e) of Rule 203 would provide that at an opening, all market orders (whether entrusted to or left with the specialist or represented by a broker or brokers in the trading crowd) including at-the-opening market orders, would have precedence over limit orders and would be executed at one price. Market orders receive priority over limit orders in that situation because they must be executed instantaneously at the market price. Provided that there is sufficient liquidity, limit orders at the opening price may be executed with market orders. Limit orders that are not near the opening price will remain on the specialist's book until they come due.

Proposed subsection 203(e)(ii) would provide that a limited price order to buy which is at a higher price than the price at which the security is to be opened, and a limited price order to sell which is at a lower price than the price at which the security is to be opened, are to be treated as market orders. It also would provide that a market order to sell short would be treated as a limited price order to sell at the price of the first permissible short sale. A limited price order to sell short which is at a lower price than the price at which the security is to be opened would be treated as a limited price order to sell at the price of the first permissible short sale. Such orders would be treated as market orders only if the opening price were higher than the first permissible short sale price.

The specialist, who may base the price upon the index value as well as the last sale price and other market factors, would determine the opening price. This differs from the current method of opening for non-primary listed securities, which is based upon the primary market's opening price. Other exchanges have comparable rules.¹¹

Block Orders. The Exchange is also proposing new Supplementary Material (f) to Phlx Rule 126, "Crossing Orders." The proposed new Supplementary Material would apply only to the crossing of block orders in Trust Shares and not to the trading of any other securities on the Exchange's equity floor. The proposed rule amendment would permit a member to "cross" at a price at or within the prevailing quotation an order to buy and an order

to sell an equivalent amount of the same Trust Share if both orders are for 25,000 Trust Shares or more and are for the accounts of persons who are not members or member organizations. The member's bid or offer would be entitled to priority at the cross price, regardless of pre-existing bids or offers at that price. Another member could trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member providing a better price to one side of the cross transaction would be required to trade with all other market interest having priority at that price before trading with any part of the cross transaction at the cross price.

In addition, new Supplementary Material (g) would permit a member to "facilitate" the crossing of orders at a price at or within the prevailing quotation, when the member has an order to buy or sell and one or both of the orders to be crossed are for persons who are members or member organizations and both orders are for 25,000 shares or more, so long as the orders are represented at the post when a sale removing all bids and offers from the Floor takes place. The Phlx understands that these cross transactions, like other exchange transactions, remain subject to section 11(a) of the Act and the rules thereunder. For example, a member relying on the exception provided by Rule 11a2-2T may need to utilize an "independent" floor broker to satisfy the requirements of that Rule. Other exchanges have similar provisions.¹² The Exchange represents that its proposed crossing provision is appropriate given the large size of Trust Share orders that the Exchange anticipates will be generated by investors.

Enhanced Participation for Trust Shares. Proposed new section (g) of Rule 119, which is based upon Phlx Options Rule 1014(g)(i) and (ii), *Equity Option and Index Option Priority and Parity*, provides for splits, which means trade participation among the crowd. The new subsection would provide Phlx equity specialists in Trust Shares with an enhanced participation in "parity trades" or trades where there are several participants bidding/offering the same

⁸ Each Trust will provide investors with an instrument that (1) closely tracks the underlying portfolio of securities; (2) trades like a share of common stock; and (3) pays holders of the instrument periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses (as described in the Trust prospectus).

⁹ The proposed definition generally tracks the definition of "at the opening order" found in American Stock Exchange LLC ("Amex") Rule 131(f) and New York Stock Exchange ("NYSE") Rule 13.

¹⁰ Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Steven Johnston, Special Counsel, Division, Commission on December 4, 2001 (clarifying the scope of securities eligible for single-price opening.)

¹¹ See, e.g., Amex Rule 108(a) and (b).

¹² See NYSE Rule 72.1(b) (Priority of Agency Cross Transactions); Amex Rule 126, Commentary sections .01 and .02 (Precedence of Bids and Offers); and Chicago Stock Exchange Rule 23, Interpretations and Policies section .02 (Cross Transactions of 25,000 Shares or More).

price.¹³ While a parity trade is generally divided evenly among the crowd participants on parity, enhanced participation would give the specialist a greater share of trades than he would normally receive. The purpose of the proposed enhanced parity split is to encourage specialists to make deep and liquid markets in order to attract order flow to the Exchange. Specialists have responsibilities that other crowd participants do not share, such as staffing costs associated with continually updating and disseminating quotes.¹⁴ Therefore, the Exchange represents that granting certain advantages to specialists, such as the proposed enhanced parity split, is a reasonable measure for attracting and retaining well-capitalized specialists.

The Exchange also represents that application of the proposed enhanced parity splits would under no circumstances cause a customer on parity to receive a smaller participation than any other crowd participant, including the specialist. Under the proposal, a customer on parity is ensured a participation that, at a minimum, is equal to that given any other participant on parity.

Current Phlx Rule 199(g) defines a "controlled account" as any account controlled by or under common control with a member broker-dealer, and defines "customer accounts," which include discretionary accounts, as all accounts other than controlled accounts and specialist accounts. Proposed Rule 119(g) provides that when the specialist in Trust Shares is on parity with one controlled account, the specialist is entitled to receive 60% of the initiating order and the controlled account would receive 40%. When the specialist is on parity with two controlled accounts, the specialist is entitled to receive 40% of the initiating order and each controlled account would receive 30%. When the specialist is on parity with three or more controlled accounts, the specialist is entitled 30% of the initiating order remaining after any customer accounts on parity have been filled. As noted above, in any of these situations if a customer were on parity, the customer

would not be disadvantaged by receiving a lesser allotment than any other crowd participant, including the specialist.

Enhanced parity is intended to encourage specialist units to trade and to provide liquidity in Trust Shares, thereby attracting order flow to the Exchange. The Exchange believes the proposal balances the competing interests of specialists and market makers.

Financial Responsibility and Reporting. Currently, specialists are required to have \$100,000 in net capital to trade equity securities. Trust Shares, which are to be listed on the Exchange, can be expected to entail a substantial financial commitment on the part of the specialist assigned to them. Because of the potential risk associated with listed Trust Shares, the Exchange is proposing to establish a minimum net capital requirement of \$1,000,000 for the trading of listed Trust Shares by specialists. The Exchange believes that imposing a higher net capital requirement is one way to ensure that the Trust Share specialist can carry out his duties to maintain a fair and orderly market. The Exchange notes that in the past it has required higher net capital requirements for specialists in FLEX® options. Specialists in those options are also required to have \$1,000,000 in net capital.¹⁵ The proposed higher net capital requirement for specialists in Trust Shares traded at the Phlx on a primary basis (contained in proposed new Rule 703(a)(v)) would not apply to Trust Shares traded on an unlisted trading privileges basis.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act¹⁶ in general and furthers the objectives of section 6(b)(5)¹⁷ in particular in that it is designed to facilitate transactions in securities; 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.

B. Self-Regulatory Organization's Statement on Burden of 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 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.

The Exchange has requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act,¹⁸ for approving, prior to the thirtieth day after publication in the **Federal Register**, portions of the rule proposal related to the following: proposed subsections (f) and (g) of Supplementary Material to Rule 126; proposed subsection (e) of Rule 203; proposed Commentary .20, and proposed amendments to Rule Commentary .01 and .15, to Rule 229; and proposed amendments to subsection (a) of Rule 703.

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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

¹³ Under Phlx Rules 119 and 120, when bids and offers are made simultaneously, or when it is impossible to determine clearly the order of time in which they were made, all such bids and offers shall be on parity. For example, suppose a floor broker holding a sell order for 100 Trust Shares announces his order to the crowd. In response, three crowd participants might simultaneously bid to buy the 100 Trust Shares at the same price. The bids are on parity.

¹⁴ The Exchange is also proposing in this rule filing a \$1,000,000 minimum net capital requirement for the specialist in Trust Shares listed on the Exchange.

¹⁵ See Phlx Rule 1079(c).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78s(b)(2).

the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-99-41 and should be submitted by January 2, 2002.

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Phlx has requested that the Commission approve the amended rule proposal on an accelerated basis, except for portions of the amended proposal concerning enhanced participation of specialists. The Exchange notes that the changes for which it seeks accelerated approval would result in rule provisions that are substantially similar to previously approved rules of other exchanges. Further, the Phlx represents that granting approval of the changes would be consistent with the protection of investors and the public interest.

The Commission finds that the portions of the rule change proposal for which the Exchange has requested accelerated approval are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the amendments are consistent with section 6(b)(5) of the Act,¹⁹ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, 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.

The Exchange has proposed to amend Rule 203 to codify a single price opening for Trust Shares and other securities for which the Exchange is the primary market. In a single-price opening, the specialist seeks to achieve a balance between buy orders and sell orders by setting and displaying a price where there is roughly equal interest on both sides of the market. The price at which this balance is achieved becomes the opening price. Market orders are used to ascertain this balance and, at opening, have precedence over limit orders. The Commission finds the proposal to establish a single price opening is consistent with previously approved rule provisions,²⁰ and should provide for efficient opening of trading in Exchange securities for which the Phlx is the primary market.

The Exchange proposal would also accommodate the crossing of block trades in Trust Shares. The specific crossing procedures that would be used differ, depending on whether a cross

involves an order for the account of an exchange member (a proprietary cross) or no orders for the account of an exchange member (an agency cross). In the proprietary cross situation, orders to be crossed are only permitted to establish precedence based on size if they are represented at the post when a sale has taken place and removed all other bids and offers from the trading floor. In addition, before a member may cross an order with an order for the member's own account, the member would have to satisfy procedural requirements in Rule 451. To take securities in the cross, for example, the member would need to have offered the same securities in the open market at a price higher than the member's bid by the minimum trading increment permitted in those securities; to supply securities in the cross, the member would need to have bid for the securities on the open market at a price lower than the member's offer by the minimum trading increment permitted in those securities.

In the agency cross situation, a member's bid or offer would be entitled to priority over pre-existing bids or offers at the cross price. The member would be required to satisfy the procedure in Rule 451(d), which permits a member to "report to his principal a transaction made with the member himself when he has orders from two principals to buy and to sell the same security," as long as the member adds to his name on that report the words "on order." Another member would be permitted to trade with either side of a pending cross transaction (*i.e.*, "break up" the cross), but only if that other member: (1) offers an improved price to either side of the pending cross transaction; and (2) trades with all market interest that has priority over the price-improving member at the improved price. If these conditions are satisfied, the price-improving member may trade with all or part of either the bid or offer side of the pending cross at the improved price.

As the Phlx noted, the use of a proprietary cross to execute trades raises the issue of compliance with section 11(a) of the Act. For a proprietary cross to avoid violating section 11(a), it must be accomplished consistent with an exception to that section's general prohibition against exchange members trading for their own accounts. As noted by the Exchange in Amendment No. 2 to the proposal, rule 11a2-2(T), *Transactions Effected by Exchange Members Through Other Members*, is

one such exception,²¹ and an Exchange member seeking to rely upon that rule may need to utilize an independent floor broker. The Commission recognizes that the Exchange is aware of and has addressed the relationship between continued compliance with section 11(a) and the proposed proprietary crossing provision.

The Exchange also proposed to impose a new net capital requirement pertaining to Trust Shares and to make specialists responsible for displaying bids and offers in Trust Shares to the crowd. The Commission finds that the proposed net capital requirement is consistent with the Exchange's expectation that Trust Shares may entail a substantial financial commitment by specialists and that the display requirement is essential to ensuring price transparency.

The Commission finds good cause for partially approving the proposed rule change, and Amendment Nos. 1, 2, and 3 thereto, prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act.²² The portions of the proposed and amended rule change pertaining to the crossing of block trades in Trust Shares, single price openings, and at-the-opening orders conform to rule provisions previously approved for use on the Amex. In addition, the proposal to impose special net capital requirements in connection with the trading of Trust Shares is consistent with a previously approved proposal of the Boston Stock Exchange, and the proposal to display bids and offers in Trust Shares is necessary to ensure transparent trading of this new securities product.

Amendment No. 1 to the proposed rule change, among other things, eliminated portions of the original proposal pertaining to the listing of Trust Shares. The Exchange subsequently filed, and the Commission approved, a separate rule proposal on that topic. Amendment No. 2, among other things, also eliminated from the proposal provisions pertaining to the establishment of Registered Equity Traders in Trust Shares. Amendment No. 2 also strengthens the original proposal by carefully delineating between procedures applicable to proprietary cross transactions versus those the Phlx would apply to agency cross transactions. Amendment No. 3 further strengthens the proposal by

²¹ The rule was adopted by the Commission pursuant to its authority under Section 11(a)(1)(H) and (a)(2). See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978).

²² 15 U.S.C. 78f(b)(2).

¹⁹ 15 U.S.C. 78s(b)(5).

²⁰ See Amex Rule 108(a) and (b).

correcting certain technical errors in the rule proposal. Accordingly, the Commission finds good cause for granting partial accelerated approval to the rule proposal, as amended.²³

VI. Conclusion

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,²⁴ that proposed amendments to Phlx Rule 126, Rule 203, Rule 229, and Rule 703 are hereby approved.²⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-30655 Filed 12-11-01; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001-11106]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115-0115, 2115-0078, 2115-0113, and 2115-0013

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of four Information Collection Requests (ICRs). The ICRs comprise (1) Electrical Engineering—Title 46 CFR Subchapter J, (2) Operations Manual and Amendments for Facilities Transferring Oil and Hazardous Materials in Bulk, (3) Self-propelled Vessels Carrying Liquefied Gas, and (4) Application and Permit to Handle Hazardous Material. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before February 11, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket (USCG 2001-11106) more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC

20590-0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

Copies of the complete ICR are available through this docket on the Internet at <http://dms.dot.gov>, and also from Commandant (G-CIM-2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593-0001. The telephone number is 202-267-2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202-267-2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202-366-5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document (USCG 2001-11106), and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Electrical Engineering—Title 46 CFR subchapter J.

OMB Control Number: 2115-0115.

Summary: We need the information sought here to ensure compliance with our rules on electrical engineering for the design and construction of U.S.-flag commercial vessels.

Need: 46 U.S.C. 3306 and 3703 authorize the Coast Guard to establish rules to promote the safety of life and property in commercial vessels. These rules appear at 46 CFR subchapter J (parts 110 to 113).

Respondents: Owners, operators, and builders of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,153 hours a year.

2. *Title:* Operations Manual and Amendments for Facilities Transferring Oil and Hazardous Materials in Bulk.

OMB Control Number: 2115-0078.

Summary: An operations manual is mandatory for waterfront facilities that will be transferring bulk oil or hazardous materials to or from vessels. It establishes procedures for personnel of the facility to follow when conducting the transfer and in the event of a spill.

Need: 33 U.S.C. 1321 authorizes the Coast Guard to establish rules to prevent the discharge of oil and hazardous materials from facilities. 33 CFR part 154 prescribes these rules.

Respondents: Owners and operators of waterfront facilities.

Frequency: On occasion.

Burden Estimate: The estimated burden is 27,369 hours a year.

3. *Title:* Self-propelled Vessels Carrying Liquefied Gas.

OMB Control Number: 2115-0113.

Summary: We need the information sought here to ensure compliance with our rules for the design and operation of carriers of liquefied gas.

Need: 46 U.S.C. 3703 and 9101 authorize the Coast Guard to establish rules to protect life, property, and the environment from the hazards associated with the carriage of dangerous liquid cargo in bulk. 46 CFR part 154 prescribes these rules for the carriage of liquefied gases in bulk on self-propelled vessels by governing the design, construction, equipment, and operation of these vessels and the safety of personnel aboard them.

Respondents: Owners and operators of self-propelled vessels carrying liquefied gas.

Frequency: On occasion.

Burden Estimate: The estimated burden is 5,131 hours a year.

4. *Title:* Application and Permit to Handle Hazardous Materials.

OMB Control Number: 2115-0013.

Summary: The information sought here ensures the safe handling of explosives and other hazardous

²³ The proposed rule change to Rule 119(a), *Enhanced Specialist Participation*, is not being approved but is only being noticed for comment by the Commission for review under section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)).

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ In approving the proposals, the Commission has considered their impact on efficiency, competition, and capital formation.