

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45710; File No. SR-Phlx-2001-27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Disengagement of Auto-Ex Due to Extraordinary Circumstances

April 9, 2002.

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 March 7, 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 self-regulatory organization. Phlx submitted Amendment No. 1 to the proposed rule change on March 28, 2001.³ Phlx submitted Amendment No. 2 to the proposed rule change on December 20, 2001.⁴ Phlx submitted Amendment Nos. 3 and 4 to the proposed rule change on

March 1, 2002,⁵ and March 8, 2002,⁶ respectively. The Commission's is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Options Floor Procedure Advice ("OFFPA") A-13, Auto Execution Engagement/Disengagement Responsibility, and Phlx Rule 1080(e), Extraordinary Circumstances, to provide for a re-evaluation of the disengagement of AUTO-X⁷ during extraordinary circumstances. Specifically, when AUTO-X is disengaged due to extraordinary circumstances, the Exchange would be required to review and confirm that such circumstances still exist five minutes after the initial declaration of extraordinary circumstances, and every fifteen minutes thereafter. Additionally, the Exchange proposes to amend Phlx Rule 1080(e) to specify the definition of extraordinary circumstances under which AUTO-X may be disengaged,⁸ or

⁵ In Amendment No. 3, the Exchange: (1) Proposed conforming amendments to Option Floor Procedure Advice A-13; (2) proposed an amendment to Exchange Rule 1080(c) to provide that the Options Committee may for any period restrict the use of AUTO-X on the Exchange in any option or series, provided that the effectiveness of any such restriction shall be conditioned upon its having been approved by the Commission pursuant to section 19(b) of the Act and the rules and regulations thereunder; and (3) represented that, pursuant to Exchange Rule 1080(f)(v), AUTOM users are notified in the event that AUTO-X is disengaged. See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated February 28, 2002 ("Amendment No. 3").

⁶ In Amendment No. 4, the Exchange proposed to amend the rule text to provide that AUTOM users are notified in the event that AUTO-X is disengaged. See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 7, 2002 ("Amendment No. 4").

⁷ AUTO-X is a feature of AUTOM, the Exchange's electronic order delivery and reporting system that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options.

⁸ The Exchange notes that the Commission has directed that the respondent options exchanges adopt new rules, or amend existing rules, concerning their automated quotation and execution systems. The Exchanges must "specify the circumstances, if any, under which automated execution systems can be disengaged or operated in any manner other than the normal manner set forth in the exchange's rules and require the documentation of the reasons for each decision to disengage an automated execution system or operate it in any manner other than the normal manner." See Section IV.B.h.(i)(bb) of the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and

operated in a manner other than the normal manner set forth in the Exchange's rules.⁹ The Exchange is also proposing record keeping requirements to be kept when AUTO-X is disengaged and reengaged. The text of the proposed rule change, as amended, follows. New text is italicized; deletions are in brackets.

Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)

(a)-(b) No change.

(c) AUTO-X—AUTO-X is a feature of AUTOM that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO-X automatically executes eligible orders using the Exchange disseminated quotation and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO-X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO-X is not engaged. An order may also be executed partially by AUTO-X and partially manually.

The Options Committee may for any period restrict the use of AUTO-X on the Exchange in any option or series *provided that the effectiveness of any such restriction shall be conditioned upon its having been approved by the Securities and Exchange Commission pursuant to section 19(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder.*

Currently, orders up to 100 contracts, subject to the approval of the Options Committee, are eligible for AUTO-X.

The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO-X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to

Imposing Remedial Actions; *In the Matter of Certain Activities of Options Exchanges*, Securities Exchange Act Release No. 43268 (September 11, 2000).

⁹ See Exchange Rule 1080(c) generally. See also SR-Phlx-2001-24, a proposed rule change to set forth the circumstances in which AUTO-X will be disengaged. Securities Exchange Act Release No. 45436 (February 12, 2002), 67 FR 7728 (February 20, 2002).

¹⁸ 17 CFR 200.30-3(a)(12)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 20.19b-4.

³ In Amendment No. 1, the Exchange requested accelerated effectiveness and deleted the following sentence from footnote 4: "The Exchange also notes that extraordinary circumstances are 'unusual market conditions' for purposes of Rule 11Ac1-1 under the Act." See letter from Diana Tenenbaum, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 27, 2001 ("Amendment No. 1").

⁴ In Amendment No. 2, the Exchange withdrew File No. SR-Phlx-2001-17 and proposed to define the extraordinary circumstances that would result in the disengagement of the Exchange's Automatic Execution System ("AUTO-X") and to set forth procedures to be followed when AUTO-X is disengaged due to extraordinary circumstances. See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated December 19, 2001 ("Amendment No. 2"). Amendment No. 2 supersedes and replaces Amendment No. 1 in its entirety.

section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(i)-(ii) No change.

(e) Extraordinary Circumstances-In the event of extraordinary circumstances with respect to a particular class of options exist, two Floor Officials may determine to disengage AUTO-X with respect to that option, in accordance with Exchange procedures. Five minutes subsequent to the disengagement of AUTO-X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO-X is disengaged), the requesting Specialist or his/her designee, two Floor Officials, and a designated surveillance staff person, shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO-X will be re-engaged when either: (i) the Specialist or his/her designee determines that the conditions supporting the extraordinary circumstances no longer exist, at which time the Specialist or his/her designee shall inform the Market Surveillance staff that the extraordinary circumstances no longer exist and that the Specialist is re-engaging AUTO-X; or (ii) when two Floor Officials and the designated surveillance staff person determine that the conditions supporting the extraordinary circumstances no longer exist. In the event extraordinary [conditions] circumstances exist floor-wide, two Exchange Floor Officials[,] and the Chairperson of the Options Committee or his/or her designee may determine to disengage the AUTO-X feature floor-wide. Five minutes subsequent to a floor-wide disengagement of AUTO-X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO-X is disengaged), two Floor Officials, the Chairperson of the Options Committee or his/her designee and a designated Market Surveillance staff person shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO-X will be re-engaged when either: (1) The Specialist determines that the conditions supporting the extraordinary circumstances no longer exist for their particular class of options at which time the Specialist or his/her designee will inform Market Surveillance staff that the extraordinary circumstances no longer exist for their particular class of options and that the Specialist is re-engaging AUTO-X; or (2) when two Floor Officials, the Chairperson of the Options Committee or his/her designee and the designated Market Surveillance staff person determine that the extraordinary circumstances no longer exist. The

NBBO feature is always disengaged when AUTO-X is disengaged.

Extraordinary circumstances include market occurrences and system malfunctions that impact a Specialist's ability to accurately price and disseminate option quotations in a timely manner. Such occurrences include fast market conditions such as volatility, order imbalances, volume surges or significant price variances in the underlying security; internal system malfunctions including the Exchange's Auto-Quote system; or malfunctions of external systems such as a specialized quote feed, or delays in the dissemination of quotes from the Option Price Reporting Authority; or other similar occurrences.

The Exchange shall document any action taken to disengage AUTO-X pursuant to this Rule 1080(e), and shall notify all AUTOM Users of each instance in which AUTO-X is disengaged due to extraordinary circumstances. Such documentation shall include: identification of the option(s) affected by such action (except in a case of floor-wide disengagement); the date and time such action was taken and concluded; identification of the Floor Officials who approved such action; the reasons for which such action was taken; identification of the Specialist and the Specialist Unit (or in the case of floor-wide disengagement, identification of the Options Committee Chairperson or his/her designee); and identification of the Market Surveillance staff person monitoring the situation. The Exchange will maintain these documents pursuant to the record retention requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder.

* * * * *

A-13 Auto Execution Engagement/Disengagement Responsibility

It is the responsibility of the option Specialist to engage the Auto Execution (Auto-X) system for an assigned option within three (3) minutes of completing the opening or reopening rotation of that option.

Where extraordinary circumstances occur, a Specialist may be provided an exemption from receiving orders through AUTO-X and may then disengage the system upon approval by two Floor Officials. Five minutes subsequent to the disengagement of AUTO-X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO-X is disengaged), the requesting Specialist or his/her designee, two Floor Officials, and a designated surveillance staff person, shall re-evaluate the

circumstances to determine if the extraordinary circumstances still exist. AUTO-X will be re-engaged when either: (i) the Specialist or his/her designee determines that the conditions supporting the extraordinary circumstances no longer exist, at which time the Specialist or his/her designee shall inform the Market Surveillance staff that the extraordinary circumstances no longer exist and that the Specialist is re-engaging AUTO-X; or (ii) when two Floor Officials and the designated surveillance staff person determine that the conditions supporting the extraordinary circumstances no longer exist. In the event extraordinary [conditions] circumstances exist floor-wide, two Exchange Floor Officials[,] and the Chairperson of the Options Committee or his/or her designee may determine to disengage the AUTO-X feature floor-wide. Five minutes subsequent to a floor-wide disengagement of AUTO-X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO-X is disengaged), two Floor Officials, the Chairperson of the Options Committee or his/her designee and a designated Market Surveillance staff person shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO-X will be re-engaged when either: (1) the Specialist determines that the conditions supporting the extraordinary circumstances no longer exist for their particular class of options at which time the Specialist or his/her designee will inform Market Surveillance staff that the extraordinary circumstances no longer exist for their particular class of options and that the Specialist is re-engaging AUTO-X; or (2) when two Floor Officials, the Chairperson of the Options Committee or his/her designee and the designated Market Surveillance staff person determine that the extraordinary circumstances no longer exist. The NBBO feature is always disengaged when AUTO-X is disengaged.

Extraordinary circumstances include market occurrences and system malfunctions that impact a Specialist's ability to accurately price and disseminate option quotations in a timely manner. Such occurrences include fast market conditions such as volatility, order imbalances, volume surges or significant price variances in the underlying security; internal system malfunctions including the Exchange's Auto-Quote system; or malfunctions of external systems such as a specialized quote feed, or delays in the dissemination of quotes from the Option

Price Reporting Authority; or other similar occurrences.

The Exchange shall document any action taken to disengage AUTO-X pursuant to this Rule 1080(e), and shall notify all AUTOM Users of each instance in which AUTO-X is disengaged due to extraordinary circumstances. Such documentation shall include: identification of the option(s) affected by such action (except in a case of floor-wide disengagement); the date and time such action was taken and concluded; identification of the Floor Officials who approved such action; the reasons for which such action was taken; identification of the Specialist and the Specialist Unit (or in the case of floor-wide disengagement, identification of the Options Committee Chairperson or his/her designee); and identification of the Market Surveillance staff person monitoring the situation. The Exchange will maintain these documents pursuant to the record retention requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder.

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 limit the duration for which Floor Officials may grant relief in the form of AUTO-X disengagement due to extraordinary circumstances, and to add the participation of the Phlx Market Surveillance staff in determining the continuation of the existence of extraordinary circumstances.

Currently, in order to obtain AUTO-X disengagement relief for a specific class of option due to extraordinary circumstances, the specialist must promptly notify the Phlx Market Surveillance Department that relief is requested.¹⁰ The specialist must also

obtain authorization from two Floor Officials. Currently, OFPA A-13 and Rule 1080(e) do not provide a specified time frame to re-evaluate the conditions under which a continuation of extraordinary circumstances may continue. Nor do they provide for substantial participation for Market Surveillance staff.

Under the proposed rules, the specialist would be required to notify the Phlx Market Surveillance Department that relief is requested to ensure proper notification to AUTOM users in accordance with Phlx Rule 1080(f)(v). The specialist also would be required to obtain authorization from two Floor Officials for relief. Two Floor Officials would continue to determine if relief is warranted.¹¹ Under the proposal, five minutes after the initial determination, and every fifteen minutes thereafter, as long as the extraordinary circumstances are in effect, the requesting specialist and two Floor Officials, with the concurrence of a designated Market Surveillance staff person, must re-evaluate whether extraordinary circumstances still exist. Thus, the proposed rules would provide substantial participation of Phlx Market Surveillance staff as well as a time period for re-evaluation. The Exchange believes that the amendments should assist in limiting the length of time that AUTO-X disengagement relief due to extraordinary circumstances continues.

The proposed rule changes, among other things, codify the Exchange's current practice as described in this paragraph. If at any time the specialist determines to re-engage AUTO-X, he/she may re-engage the system. The specialist must notify the Market Surveillance staff that the conditions supporting the extraordinary circumstances no longer exist, and that the specialist is re-engaging AUTO-X. This may be done after AUTO-X is re-engaged.

Currently, in the event extraordinary circumstances exist floor-wide, two Exchange Floor Officials and the Chairperson of the Options Committee or his/her designee may determine to disengage the AUTO-X feature floor-wide. Under the proposal, five minutes after the initial declaration and every fifteen minutes thereafter, as long as the extraordinary circumstances are in effect floor wide, two Floor Officials, the Chairperson of the Options Committee or his/her designee, with the concurrence of a designated Market

Surveillance staff person, must re-evaluate the circumstances to determine if the floor-wide extraordinary circumstances still exist. Thus, the proposed rules would provide substantial participation of Market Surveillance staff during floor-wide extraordinary circumstances as well as a time period for re-evaluation. The Exchange believes that the amendment should assist in limiting the length of time floor-wide extraordinary circumstances continue.

The Exchange also proposes to define "extraordinary circumstances" under which AUTO-X may be disengaged and to specify in the rules the requirement that certain relevant information is documented by the Exchange upon actual disengagement and re-engagement of AUTO-X. Currently, extraordinary circumstances that justify disengagement include "fast market conditions, systems malfunctions, and other circumstances that limit the Exchange's ability to disseminate or update market quotations in a timely and accurate manner."¹² The instant proposal would amend and clarify this definition, which was used in the original proposed rule change adopting Exchange Rule 1080.¹³

The proposed rule would define extraordinary circumstances to include market occurrences and system malfunctions that impact a specialist's ability to accurately price and disseminate option quotations in a timely manner. Such occurrences include fast market conditions such as increased volatility, order imbalances, volume surges or significant price variances in the underlying security; internal system malfunctions including the Exchange's Auto-Quote system; or malfunctions of external systems such as a specialized quote feed, or delays in the dissemination of quotes from the Option Price Reporting Authority; or other similar occurrences.

The Exchange believes that these factors can quickly and precipitously affect the price of the underlying security, and thereby the option overlying the security. All these situations may result in the Exchange's inability to disseminate accurate and timely quotes. In such extraordinary circumstances, the Exchange believes that it is appropriate to allow specialists to execute orders manually that would otherwise be AUTO-X eligible in order to ensure that the specialist is able to

¹¹ Under the current proposal, if such relief is granted, surveillance staff will announce to the Options Floor, and the AUTOM desk, that the particular option is in extraordinary circumstances.

¹² See Securities Exchange Act Release No. 38792 at note 17 (June 30, 1997), 62 FR 36602 (July 8, 1997).

¹³ *Id.*

¹⁰ See Exchange Rule 1080(f)(v).

continue to make fair and orderly markets.

The proposed rule changes, among other things, codify the Exchange's current practice as described in this paragraph. With respect to record keeping requirements, the Exchange maintains an electronic audit trail, called an AUTO-X Disengagement Log, that electronically monitors and electronically records every situation in which AUTO-X is disengaged. With respect to any request for AUTO-X disengagement relief, the Exchange currently records: (1) Any action taken to disengage AUTO-X or to operate it in any manner other than normal; (2) the date of the specialist's request to disengage AUTO-X; (3) the time the specialist's request was granted, and the time of re-engagement; (4) the reason for the request to disengage (*e.g.*, extraordinary circumstances or other); (5) whether another market has implemented comparable relief; (6) the specialist's name; (7) the specialist unit's name; (8) the options class (except in a case of floor-wide disengagement); (9) the particular problem that the specialist experienced; and (10) the two Floor Officials' signatures (in case of floor-wide disengagement, the Options Committee Chairperson or his designee's signature is also required). Under the proposed rule, the Exchange would codify its practice of maintaining this documentation pursuant to the Exchange's record retention requirements under section 17 of the Act.¹⁴

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,¹⁵ in general, and section 6(b)(5),¹⁶ in particular, because 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 to protect investors and the public interest, by codifying a definition of extraordinary circumstances that would give rise to relief from AUTO-X engagement, and by codifying procedures to be followed in extraordinary circumstances when AUTO-X is disengaged.

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 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 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 proposal, as amended, 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-2001-27 and should be submitted by May 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-9060 Filed 4-12-02; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9P27]

Commonwealth of Massachusetts

Dukes County constitutes an economic injury disaster loan area as a result of a fire that destroyed approximately 9 businesses in a Historic Inn in Tisbury, Massachusetts on December 15, 2001. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on January 9, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration
Disaster Area 1 Office
360 Rainbow Blvd, South 3rd Floor
Niagara Falls, NY 14303

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent. The number assigned for economic injury for this disaster is 9P2700 for Massachusetts.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 9, 2002.

Hector V. Barreto,
Administrator.

[FR Doc. 02-9077 Filed 4-12-02; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3405]

State of Tennessee

As a result of the President's major disaster declaration on April 5, 2002, I find that Bledsoe, Blount, Claiborne, Cocke, Hancock, Hawkins, Loudon and Sevier Counties in the State of Tennessee constitute a disaster area due to damages caused by severe storms and flooding occurring January 23 through 28, 2002 and March 15 through March 20, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 4, 2002 and for economic injury until the close of business on January 6, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified

¹⁴ 15 U.S.C. 78q.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 17 CFR 200.30-3(a)(12).