

the Commission's granting of accelerated approval.⁹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 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 Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to file number SR-Philadep-96-17 and should be submitted by August 28, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-Philadep-97-03) be, and hereby is, approved through October 31, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38891; File No. SR-Phlx-97-34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending the FCO Selective Quoting Facility

July 31, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on

⁹ Telephone conversation with John Rudolph, Supervisory Trust Analyst, Board of Governors of the Federal Reserve Board.

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. § 78s(b)(1).

July 25, 1997, 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.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 pursuant to Rule 19b-4 of the Act,³ proposes to amend the foreign currency option ("FCO") Selective Quoting Facility ("SQF"), embodied in Rule 1012, Commentary .04 and Floor Procedure Advice ("Advice") F-18, FCO Expiration Months and Strike Prices—Selective Quoting Facility, to re-designate some series that maintain open interest, but have not traded within the previous five trade days, as update strikes in certain situations. Currently, these strikes are considered non-update strikes under the provisions of Advice F-18 and Rule 1012.04. The proposal would permit the Foreign Currency Options Committee to designate these non-update strikes as update strikes, after notification to the trading community and with a quarterly review by the Committee. The SQF is a feature of the Exchange's Auto-Quote System. The complete text of the proposed rule change is available at the places specified in Item IV below.

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

² The proposal was filed originally by the Phlx on July 25, 1997, and clarified on July 29, 1997. The Phlx clarified the text of the rule and the advice to state that the purpose of quarterly review by the foreign Currency Options Committee is to determine if series receiving designation as update strikes should continue to receive such designation. See Letter from Philip H. Becker, Senior Vice President and Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC (July 28, 1997). See also Securities Exchange Act Release No. 35123 (Dec. 20, 1994), 59 FR 66692, at 12 (permitting the staff discretion to accept editorial changes to a proposed rule filing without triggering a new 30 day comment period).

³ 17 CFR 240.19b-4.

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

Implemented in 1994,⁴ the SQF was intended to reduce the number of strike prices being continuously updated and disseminated, thus resulting in more timely and accurate FCO quote displays. The SQF establishes criteria to determine whether the bid/ask quotation for each FCO series is eligible for transmission to the Options Price Reporting Authority ("OPRA") for off-floor dissemination to securities data vendors. Currently, the SQF, a feature of the Exchange's Auto-Quote system, categories certain FCO strikes as "non update" or "inactive" strikes, which are disseminated with the OPRA indicator "I" and zeroes (e.g., 000-000), in lieu of market. When a series is inactive, those bids and offers are no longer updated in the Exchange's Auto-Quote system for dissemination. However, if interest is then voiced in any such series, it can be activated immediately upon establishment of a quote in that series. Inactive strikes with open interest (that have not traded in the previous five days) are quoted once at the close of trading in the previous five days) are quoted once at the close of trading each day for purposes of mark-to-market valuation.

In contrast, "update" or "active" strikes include, at minimum: (1) Two in-the-money and six out-of-the-money, and (2) strikes with open interest that have traded within the previous five days. Because Rule 1012.04 establishes the *minimum* strikes to be activated, active strikes may also be added at the initiative of the Exchange or in response to a request by the Specialist or an FCO Floor Official.

Designating as inactive those series that are away-from-the money or not recently traded (meaning have the least investor interest) eliminates quote changes in those series, thus reducing the dissemination delays caused by thousands of quote changes in volatile trading periods. Because inactive series are not continuously updated and disseminated, quotation processing times are reduced such that quotes respecting active strikes are updated and disseminated to customers much more quickly.

At this time, the Exchange proposes that the SQF feature of Auto-Quote

⁴ Securities Exchange Act Release No. 33067 (October 19, 1993), 58 FR 57658.

activate certain other strikes as update strikes. Specifically, the FCO Committee could re-designate some series that maintain open interest, but have not traded within the previous five trade days, as update strikes. Thus, the purpose of the proposal is to effect this systems change to disseminate additional strikes as active, upon FCO Committee approval.

The Exchange believes that the flexibility to activate additional strikes is necessary to ensure that SQF dissemination includes truly active strikes. The Exchange also believes that allowing the Committee to determine which strikes are truly active is appropriate and reasonable. The definition of active strike has evolved since the beginning of the SQF.⁵ The Rule and Advice, in recognition of the need for flexibility, currently permit the Exchange to activate strikes intra-day. Consistent with this ability, the proposal would allow the Committee to activate strikes with open interest that have *not* traded within the previous five days, regardless of a qualifying request, in order to respond more promptly to the needs of the FCO investment community. Any such action by the Committee would involve notification to the FCO trading floor by Exchange memorandum. Any strikes activated by the Committee would be reviewed by the Committee quarterly⁶ to ensure that they warrant active status and do not remain indefinitely activated.⁷

In addition, in establishing in the Rule and Advice last year that the defined active strikes are a minimum, the Exchange codified the ability to activate other strikes. In this regard, all expiration months (Except long-term) as opposed to the nearest three months, as well as around-the-money European style options (as opposed to only

European style options with open interest and trading) were activated. Thus, at this time, the Exchange proposes to correct the text of the Rule and Advice to reflect two in-the-money strikes and six out-of-the-money strikes for both puts and calls around the underlying price for American and European style options for all expiration dates (except long-term). The Exchange also notes that the aspect of the proposal granting the FCO Committee discretion to activate certain strikes is consistent with the previously-added "at minimum" language, and, in fact, bolsters the current provisions to reflect that certain strikes will be activated beyond the "minimum" definition.

The Exchange believes the proposal balances the need to prevent excessive quote disseminations with preserving meaningful dissemination of FCO quotes. The proposal is also designed to facilitate orderly quote dissemination to and coordination between the Exchange, the Options Clearing Corporation ("OCC"), OPRA and securities information vendors. A quote will always be disseminated when a trade occurs in a previously-inactive series and quotes in inactive series can always be requested from the trading crowd, consistent with the protection of investors and the public interest. In sum, the Phlx believes that the proposed change to the SQF feature should facilitate the specialists' ability to focus on active series, which should, in turn, result in tighter, more liquid markets, consistent with Section 6(b)(5).⁸

For these reasons, the proposed rule change is consistent with Section 6⁹ of the Act in general, and in particular, with Section 6(b)(5),¹⁰ 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 a 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

Because the foregoing rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from July 25, 1997, the date on which it was filed, or such shorter time that may be designated, it has become effective pursuant to Section 19(b)(3)(A)¹¹ of the Act and rule 19b-4(e)(6).¹² Specifically, the Exchange believes that the proposal is appropriate for the procedure applicable to non-controversial filings, because it deals with the operational details of an existing Commission-approved system. Further, the proposal does not significantly affect the protection of investors or the public interest: the proposed SQF amendments do not affect the price or time of the FCO executions, as only quoting is affected; the proposal is intended to activate more series, where needed. Third, the Exchange has requested that the proposal become effective seven days after the filing of of proposed rule change, noting that this shorter time period for effectiveness is consistent with the protection of investors and the public interest.¹³ The Exchange provided written notice of its intent to file the proposed rule change on July 16, 1997.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

⁵ In 1995, The Exchange amended the SQF to reduce the number of strikes considered active by: (1) eliminating series with open interest that have not traded within the previous five trading days; (2) "de-activating" strikes intra-day; and (3) redefining around-the-money active strikes as the five options with an approximate 10, 20, 30, 40 and 50 delta, instead of those four above and four below the spot price. Securities Exchange Act Release No. 36636 (December 26, 1995), 61 FR 209, (File No. SR-Phlx-95-62). In 1996, the SQF was amended to redefine around-the-money strikes as two in and six out-of-the-money strikes. Securities Exchange Act Release No. 37883 (October 29, 1996), 61 FR 56991, (File No. SR-Phlx-96-39).

⁶ See *supra* note 2.

⁷ The Phlx should closely monitor the Committee's use of discretion to ensure that series are not designated as update strikes in an overly broad manner, materially impacting on the intended benefit of the SQF—to reduce the number of strike prices being continuously updated and disseminated in order to have more time and accurate FCO quote displays. Use of Committee discretion to this extent would require a Section 19(b) filing by the Phlx.

⁸ 15 U.S.C. § 78f(b)(5).

⁹ 15 U.S.C. § 78f.

¹⁰ 15 U.S.C. § 78f(b)(5).

¹¹ 15 U.S.C. § 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(e)(6).

¹³ For the reasons submitted by the Exchange, the Commission finds that shortening the time period for effectiveness to seven days is consistent with the protection of investors and the public interest. See Securities Exchange Act Release No. 35123, *supra* note 2, at 21.

Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-97-34 and should be submitted by August 28, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

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

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

August 1, 1997.

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

the Exchange filed Amendment No. 2 to the proposed rule change.⁴

Notice of the proposal and Amendment Nos. 1 and 2 was published for comment and appeared in the **Federal Register** on May 5, 1997.⁵ No Comment letters were received on the proposal. On June 16, 1997, the Phlx filed Amendment No. 3 to the proposed rule change.⁶ This order approves the Phlx's proposal, as amended.

I. Description of the Proposal

A. History of PACE

The PACE System has served as the Exchange's automatic order routing and execution system for securities on the equity trading floor, providing certain execution guarantees. Initially, the PACE System was created to provide an efficient mechanism for the delivery of small customer orders (up to 599 shares) to the specialist for manual execution. Thereafter, PACE order size eligibility increased, automatic execution became a feature of PACE, and the professional execution standard for PACE orders greater than 600 shares was codified.⁷ Pursuant to Supplementary Material .02 of the Rule, only agency orders are currently executed through PACE.⁸ PACE orders are only eligible for

Officer, Phlx, to James T. McHale, Special Counsel, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated April 3, 1997 ("Amendment No. 1").

⁴ Amendment No. 2 clarifies the operation of the proposed rule change by revising the fourth example in Section I, B "Proposed Changes," *infra*. See letter from Philip H. Becker, Senior Vice President, Chief Regulatory Officer, Phlx, to James T. McHale, Special Counsel, OMS, Division, Commission, dated April 17, 1997 ("Amendment No. 2").

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

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

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

⁸ See Securities Exchange Act Release Nos. 26968 (June 23, 1989) (SR-Phlx-89-13 defining agency orders); and 36442 (October 31, 1995) (SR-Phlx-95-32 permitting broker-dealer orders on PACE). Although approval for the delivery of broker-dealer orders through PACE was received, this feature is not currently utilized by broker-dealers. See Amendment No. 1, *supra* note 3.

execution after the primary market has opened.⁹

B. Proposed Changes

The Phlx proposes to amend Rule 229 to revise the: (1) Execution guarantee applicable to PACE market and marketable limit orders¹⁰ over 599 shares; (2) out-of-range protection provisions; (3) execution price for partial round lots; and (4) organizational and miscellaneous provisions.

(i) Execution Guarantees

The Exchange proposes to amend the execution guarantee applicable to market and marketable limit orders greater than 599 shares.¹¹ Currently, pursuant to the first paragraph of Rule 229.05, market orders up to 599 shares are stopped at the PACE Quote at the time of entry of such orders into the system ("Stop Price"), regardless of the size of the PACE Quote, and are subject to a delay of up to 15 seconds in order to receive an opportunity for price improvement. This feature is known as the "Public Order Exposure System" or "POES." If such market order is not executed at an improved price within the 15 second window, the order will be automatically executed at the Stop Price.¹² Moreover, the second paragraph of Rule 229.05 provides that, subject to these procedures (*i.e.*, the procedures outlined in the first paragraph of Rule 229.05), the specialist may voluntarily

⁹ See Securities Exchange Act Release No. 27596 (January 8, 1990) (SR-Phlx-89-15 at n.6). See also Chicago Stock Exchange, Incorporated ("CHX") Rules, Article XX, Rule 37(a)(4).

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

¹¹ The Exchange is not amending the automatic execution guarantee applicable to orders for 599 shares or less. Therefore, as currently provided in Supplementary Materials .05 and .10(a) of Rule 229, if an order is for 599 shares or less, it will continue to be automatically executable at the PACE Quote, regardless of the size of the PACE Quote. The PACE Quote is defined as the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific, or Philadelphia Stock Exchanges, or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote, as appropriate.

¹² If the PACE Quote at the time of order entry into the system reflects a 1/8 point spread between the best bid and offer, that order will be executed immediately without the 15 second delay. In a separate rule filing, the Exchange has proposed to modify POES, increasing the execution delay from 15 to 30 seconds. See Securities Exchange Act Release No. 38864 (July 23, 1997) (SR-Phlx-97-32).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 makes several clarifying revisions to the proposal and corrects a typographical error. See Letter from Philip H. Becker, Senior Vice President, Chief Regulatory