

OCC believes that the proposed rule change will increase its financial surveillance of its clearing members in situations where the clearing member's net capital falls below that level required by its futures clearing organization. OCC believes that this additional standard will enhance its membership criteria and afford OCC with greater protection without being unduly burdensome. This proposed additional standard will incorporate financial criteria within OCC's rules that are already applicable to clearing members registered as FCMs.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations promulgated thereunder because the proposed rule change is consistent with assuring the safeguarding of securities and funds which are in the custody and control of OCC and for which it is responsible.

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

OCC does not believe that the proposed rule change will impose any burden on competition.

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

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 OCC consents, the Commission will:

(1) Such clearing member's net capital shall become less than the greater of \$1,000,000 or (in the case of a clearing member not electing to operate pursuant to the alternative net capital requirements) *ten percent of its aggregate indebtedness, or (in the case of a clearing member electing to operate pursuant to the alternative net capital requirements) five percent of its aggregate debit items, or (in the case of a clearing member that also registered as a futures commission merchant) the minimum net capital required by the clearing organization of the clearing member's designated self regulatory organization;* or

(2)-(6) [no change.]

(b) [No changes from changes proposed in SR-OCC-97-05.]

(Deleted text is bracketed and additions are in italics.)

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule 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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR-OCC-97-12 and should be submitted by March 12, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-4203 Filed 2-18-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39640; File No. SR-PHLX-98-05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Regarding Automatic Price Improvement

February 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that January 27, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange")

filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On February 3, 1998, and February 6, 1998, respectively, the Exchange filed amendments 1 and 2 to the proposal with the Commission.² The Commission 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, pursuant to Rule 19b-4 of the Act, proposes to amend Rule 229, the Phlx Automated Communications and Execution ("PACE") System, Supplementary Material .07(c)(i), Automatic Double-up/Double-down Price Improvement, to clarify and correct three aspects of this new provision.³ First, the Exchange proposes to add into the text of Rule 229.07(c) that the Public Order Exposure ("POES") window does not apply where automatic price improvement or manual price protection are in place. Second, the Exchange proposes to expand upon the provision stating that member organizations entering orders may elect to have such orders executed in accordance with paragraph (c), or not to participate in either double-up/double-down feature. Specifically, the Exchange proposes to add that failure to elect will result in the activation of the double-up/double-down feature for that User, but specialists determine whether to provide automatic price improvement in a particular security. Third, the Exchange proposes to clarify that in situations where automatic price improvement would result in an execution at a price better than the last sale price, the order would be stopped at the PACE Quote⁴ when received, meaning that the order is guaranteed to

² See Letter from Edith Hallahan, Associate General Counsel, Phlx to Michael Walinskas, Senior Special Counsel, SEC dated February 2, 1998 ("Amendment No. 1") and letter from Edith Hallahan, Associate General Counsel, Phlx to Michael Walinskas, Senior Special Counsel, SEC dated February 6, 1998 ("Amendment No. 2"). Amendment No. 1 makes several substantive change to the originally proposed filing. Amendment No. 2 makes a non-substantive change to correct an internal cross-reference in Rule 229.07(c)(i)(D).

³ See Securities Exchange Act Release No. 39548 (January 13, 1998), 63 FR 3596 (January 23, 1998).

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

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

receive at least that price by the end of the trading day. The text of the proposed rule change is available at the Office of the Secretary, the Phlx and at the Commission.

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

In its filing with the Commission, the 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

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

Recently, the Commission approved Rule 229.07(c), providing either automatic price improvement or manual price protection in double-up/double-down situations.⁵ A "double-up/double-down" situation is defined as a trade that would be at least: (i) $\frac{1}{4}$ (up or down) from the last regular way sale on the primary market; or (ii) $\frac{1}{4}$ from the regular way sale that was the previous intraday change on the primary market.⁶ The term "double" originated with two $\frac{1}{8}$ ticks, meaning $\frac{1}{4}$. A down tick of $\frac{1}{16}$ followed by a down tick of $\frac{3}{16}$ would be a double-down situation, because it equals $\frac{1}{4}$.

During the approval process for Rule 229.07(c), two potential clarifications were identified. First, the POES window does not apply where automatic price improvement or manual price protection are in place.⁷ The POES window, contained in Rule 229.05,

currently provides that round-lot market orders up to 500 shares and partial round-lot ("PRL" which combines a round-lot with an odd-lot) market orders up to 599 shares are stopped at the PACE Quote at the time of entry into PACE ("Stop Price") for a 30 second delay to provide the Phlx specialist with the opportunity to effect price improvement when the spread between the PACE Quote exceeds $\frac{1}{8}$ point. If such order is not executed with the POES window, the order is automatically executed at the Stop Price. The representation that the POES window does not apply when automatic price improvement or manual price protection are in place was made by the Exchange in the original proposal to adopt Rule 229.07(c),⁸ and is now being added to the actual text of that provision.

Second, the Exchange proposes to expand upon the provision stating that member organizations entering orders may elect to have such orders executed in accordance with paragraph (c), or not to participate in either double-up/double-down feature. The Exchange proposes to add that failure to elect will result in the activation of the double-up/double-down feature for that User, noting that specialists determine whether to provide automatic price improvement in a particular security.⁹ This change is intended to clarify that enabling the features is the default setting; thus, PACE users may choose not to participate, but failure to choose results in enabling the features.

Third, following approval, but prior to implementation of the proposal, a situation was identified whereby certain orders would automatically receive price improvement resulting in an execution better than the last sale. Specifically, "better than the last sale" means a buy order at a price less than the last sale or a sell order at a price higher than the last sale. This was not the intent of the original proposal, and, in fact, may create a potential violation of the short sale rule,¹⁰ which prohibits certain short sales of a security on a down tick. For example, where the PACE Quote is $22\frac{1}{4}-\frac{3}{4}$, the last sale was at $\frac{3}{4}$ and the previous sale was at $\frac{1}{2}$, the provision would apply to a sell order, because selling at $\frac{1}{4}$ creates a double-down tick ($\frac{1}{2}$ away from $\frac{3}{4}$), as well as a buy order, because buying at $\frac{3}{4}$ is, although not an up or down tick

from the last sale of $\frac{3}{4}$, $\frac{1}{4}$ away from the last change, even though the last sale at $\frac{3}{4}$ (which was a zero tick) created the double-up tick from the previous sale at $\frac{1}{2}$. The buy order would automatically be improved to $\frac{5}{8}$, which would result in an execution at a price better than the last sale and, possibly, in violation of the short sale rule; if the specialist selling at $\frac{5}{8}$ was short that security, a short sale on a down tick has occurred automatically. The sell order is currently eligible to be improved to $\frac{3}{8}$, without a potential short sale rule violation.¹¹

Instead, the Exchange proposes that in any situation where an improved price would be better than the last sale, the order be stopped at the PACE Quote when received. As stated in the proposal adopting this provision, stopped orders are subject to Equity Floor Procedure Advice A-2, such that specialists must display stopped orders at the improved price¹² and any contra-side orders received by the specialist will be taken into account for purposes of determining when to execute a stopped order and at what price. Thus, this change is intended to eliminate potential short sale violations respecting PACE orders to buy, and to correct the result that any order may receive price improvement over the last sale. The Exchange does not believe it is customary or appropriate to provide price improvement over the last sale price. Price improvement generally takes the form of stopping orders, where the next sale price can benefit the stopped order; the last sale price also serves as a measure against the stop price. In this regard, the Exchange notes that automatic price improvement on the Chicago Stock Exchange ("CHX") does not consist of price improvement over the last sale.¹³ The proposal at hand is intended to create an exception to providing automatic double-up/double-down price improvement to eligible orders pursuant to rule 229.07(c)(i). As stated above, this exception was omitted from the original proposal and serves to complete that initiative for quick implementation of automatic price improvement on the Phlx. Despite this exception, the essence of the provision—to automatically improve eligible orders in double-up/double-down situations—remains fundamentally preserved.

⁸ See Securities Exchange Act Release No. 39548 (January 13, 1998), 63 FR 3596 (January 23, 1998), at note 10.

⁹ See Securities Exchange Act Release NO. 39548 (January 13, 1998), 63 FR 3596 (January 23, 1998), at note 22.

¹⁰ See Phlx Rule 455 and Section 10(a) of the Act.

¹¹ The specialist would be the buyer in this case, and the sell order could not be a sell short order, as such orders are not accepted over the PACE System.

¹² The order would be incorporated into the determination of the Specialist's best bid and offer.

¹³ See CHX Rules Article XX, Rule 37.

⁵ See supra note 3.

⁶ Hereinafter, all references to the last sale price are to the last regular way sale.

⁷ See Securities Exchange Act Release No. 39225 (October 8, 1997), 62 FR 54147 (October 17, 1997).

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6 of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5)¹⁵ in particular, in that it is designed to promote just and equitable principles of trade and perfect the mechanism of a free and open market and a national market system, by correcting and clarifying the Phlx's double-up/double-down rule to more accurately and fairly provide price improvement to PACE orders.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(e)(6)¹⁷ thereunder, the proposed rule change has become effective upon filing as it effects a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has provided written notice of its intent to replace the original filing with this filing (Amendment No. 1). The Exchange has requested that the Commission accelerate the operative date of the proposal in order for the automatic double-up/double-down price improvement provision, as amended, to become operative promptly.

The Commission finds good cause for accelerating the operative date of the proposal as of the date of this notice. Accelerating the operative date of the proposal will enable the Exchange to begin using its automatic double-up/double-down price improvement provision without the possibility of

violating the short sale rule. In addition, the Exchange's representation that the POES window does not apply when automatic price improvement or manual price protection are in place was made in the original proposal; the current filing merely codifies this treatment in Phlx's rule book.¹⁸ Finally, the Commission believes that the proposed refinement to the automatic double-up/double-down feature that stops certain orders at the PACE quote rather than providing an immediate execution better than the last sale price is consistent with the double-up/double-down protection program that is employed by CHX.¹⁹ Although customers may not benefit from the automatic double-up/double-down program to the extent the original filing (Phlx 97-23) allowed, the revised program should still enhance the quality of stock executions on Phlx. The Commission notes that the original proposal was published for the full comment period during which no comments were received.²⁰ The Commission believes that the proposal does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate for 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-PHLX-98-05 and should be submitted by March 12, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:²¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-4096 Filed 2-18-98; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY:In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202-205-6629.

SUPPLEMENTARY INFORMATION:

Title: "Financing Eligibility Statement for Demonstration of Social or Economic Disadvantage."

Type of Request: Extension of a currently approved collection.

Form No's: 1941A, 1941B, 1941C.

Description of Respondents: SBA Businesses Seeking Financing from Specialized Small Business Investment Companies (SBIC).

Annual Responses: 1,000.

Annual Burden: 2,000.

Comments: Send all comments regarding this information collection to Cathy Fields, Program Analyst, Office of Investment Division, Small Business Administration, 409 3rd Street, S.W., Suite 6300, Washington, D.C. 20416. Phone No: 202-205-6512.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

¹⁴ 15 U.S.C. 78f.

¹⁵ U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(e).

¹⁸ See Securities Exchange Act Release No. 39548 (January 13, 1998), 63 FR 3596 (January 23, 1998).

¹⁹ See CHX Rules Article XX, Rule 37(b)(6).

²⁰ See Securities Exchange Act Release No. 39548 (January 13, 1998), 63 FR 3596 (January 23, 1998) (order approving SR-Phlx-97-23).

²¹ 17 CFR 200.30-3(a)(12).