

behalf of investors.<sup>11</sup> Congress then directed the Commission to facilitate the establishment of coordinated facilities for the clearance and settlement of transactions in securities, securities options, futures, and options on futures.<sup>12</sup> By providing clearance and settlement services for futures on broad-based stock indexes and options on such futures under the same basic rules and procedures applicable to the clearance and settlement of other OCC-cleared contracts such as options and security futures, OCC is establishing itself as a facility capable of providing coordinated clearance and settlement services for transactions in both securities and futures. Therefore, the Commission finds that the approval of OCC's rule change is consistent with the directive of Congress.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2001-16) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45928; File No. SR-Phlx-2001-27]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto Relating to Disengagement of Auto-Ex Due to Extraordinary Circumstances

May 15, 2002.

#### I. Introduction

On March 7, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the disengagement of AUTO-X, the automatic execution feature of the Exchange's Automated Options Market ("AUTOM").<sup>3</sup> On March 28, 2001, December 20, 2001, March 1, 2002 and March 8, 2002, Phlx submitted Amendment Nos. 1,<sup>4</sup> 2,<sup>5</sup> 3,<sup>6</sup> and 4,<sup>7</sup> respectively. The proposed rule change, as amended by Amendment Nos. 1, 2, 3, and 4, was published for comment in the **Federal Register** on April 12, 2002.<sup>8</sup> The Commission received no comments on the amended proposed rule change. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

The Exchange proposes to amend Options Floor Procedure Advice ("OFPA") 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-X<sup>9</sup> during extraordinary circumstances. Specifically, when

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange filed this proposed rule change pursuant to the requirements of Section IV.B.h.(i)(bb) of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Phlx (as well as the other floor-based options exchanges) to adopt new, or amend existing rules concerning automatic quotation and execution systems which specify the circumstances, if any, by which automated execution systems would be disengaged or operated in any manner other than the normal manner set forth in the exchange's rules; and, requires the documentation of the reasons for each decision to disengage an automatic execution system or operate it in any manner other than the normal manner. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282.

<sup>4</sup> 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").

<sup>5</sup> 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 superseded and replaced Amendment No. 1 in its entirety.

<sup>6</sup> See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated February 28, 2002 ("Amendment No. 3").

<sup>7</sup> See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 7, 2002 ("Amendment No. 4").

<sup>8</sup> See Securities Exchange Act Release No. 45710 (April 9, 2002), 67 FR 18295 (April 12, 2002).

<sup>9</sup> 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.

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, or operated in a manner other than the normal manner set forth in the Exchange's rules.<sup>10</sup> The Exchange also proposes record keeping requirements to be kept when AUTO-X is disengaged and reengaged.

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.<sup>11</sup> The specialist must also obtain authorization from two Floor Officials. Currently, OFPA A-13 and Phlx 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 of 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.<sup>12</sup> 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.

The proposed rule changes, among other things, would codify the Exchange's current practice as described in this paragraph. If at any time the

<sup>10</sup> 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 operated in a manner other than the normal manner. Securities Exchange Act Release No. 45436 (February 12, 2002), 67 FR 7728 (February 20, 2002).

<sup>11</sup> See Exchange Rule 1080(f)(v).

<sup>12</sup> If such relief is granted, surveillance staff would announce to the Options Floor, and the AUTOM desk, that the particular option is in extraordinary circumstances.

<sup>11</sup> 15 U.S.C. 78q-1(a)(1)(D).

<sup>12</sup> 15 U.S.C. 78q-1(a)(2)(A)(ii).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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.

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."<sup>13</sup> The proposal would amend and clarify this definition, which was used in the original proposed rule change adopting Exchange Rule 1080.<sup>14</sup>

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 proposed rule changes, among other things, would 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.<sup>15</sup>

### III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended by Amendment Nos. 1, 2, 3, and 4, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>16</sup> and, in particular, the requirements of Section 6 of the Act<sup>17</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>18</sup> because it provides objective criteria and well-defined procedures for disengaging and reengaging AUTO-X, which should increase the likelihood that AUTO-X will not be disengaged in a discriminatory manner. Moreover, the record keeping requirements and other

proposed procedures are not unreasonable.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-Phlx-2001-27), as amended by Amendment Nos. 1, 2, 3, and 4, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45942; File No. SR-Phlx-2002-32]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Various Option Fees

May 16, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 1, 2002, 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 Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Phlx proposes to amend its schedule of dues, fees, and charges for its equity option transaction charges in the following three ways: (1) To reinstate a \$.08 per contract Firm/Proprietary Facilitation Transaction charge,<sup>3</sup> (2) to increase the Firm/

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> A facilitation transaction occurs when a Floor Broker holds an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, executes both orders as a facilitation cross. See Securities Exchange Act Release No. 44893 (October 2, 2001), 66 FR 51485 (October 9, 2001) (eliminating Firm/Proprietary Facilitation Transaction charge); Phlx Rule 1064.

<sup>13</sup> See Securities Exchange Act Release No. 38792 at note 17 (June 30, 1997), 62 FR 36602 (July 8, 1997).

<sup>14</sup> *Id.*

<sup>15</sup> 15 U.S.C. 78q.

<sup>16</sup> In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation.

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

<sup>17</sup> 15 U.S.C. 78f.

<sup>18</sup> 15 U.S.C. 78f(b)(5).