

individuals who are technically independent contractors, but carry out the same functions as persons employed directly by the member organization. Expanding the class of persons required to supply member firms with all trading accounts for which that person maintains a beneficial interest should help members to monitor the trading activities of those individuals that have a close nexus to the member's solicitation or handling of business in securities. The requirement should also make covered individuals aware of the prohibition against the misuse of material, nonpublic information. In addition, the Commission believes that requiring all covered persons to update the Exchange's "ITSFEA Account List" should assist Exchange and Commission review of those records and make any fraudulent acts easier to deter and detect.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-PHLX-97-39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39481; File No. SR-Phlx-96-14]

#### Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Universal Trading System's Morning Session

December 22, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on April 29, 1996 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change, and on July 26, 1996, submitted to the Commission Amendment No. 1 to the proposed rule change.<sup>1</sup> The original filing, as amended

by Amendment No. 1, was published for comment in Securities Exchange Act Release No. 37640 (September 4, 1996), 61 FR 47993 (September 11, 1996). No comment letters were received. On October 29, 1997, the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 under the Act,<sup>2</sup> proposes to implement a daily pre-opening order matching session ("Morning Session" or "Session") for the execution of large-sized stock orders on a volume weighted average price ("VWAP<sup>TM</sup>") basis. This amendment restates the original proposal and proposes to: (1) Clarify the system functions of the Exchange and the Universal Trading System ("System" or "UTS<sup>TM</sup>"); (2) delete references to over-the-counter ("OTC") securities; (3) provide for an equity trading floor UTS terminal and prohibit floor members from UTS trading in non-specialty issues; (4) update and detail matching priority provisions; (5) update and detail order types and order entry procedures; (6) clarify participation and subscriber access; (7) separate and elaborate "upon extraordinary circumstances" language; and (8) expand upon the liability provisions.

The Morning Session has been designed to provide investors with the means to execute large-sized stock orders anonymously and at fair market prices approximately 15 minutes prior to the opening of the "regular trading session" (*i.e.*, 9:30 A.M.-4:00 P.M.).<sup>3</sup> The price of Morning Session transactions will be determined at approximately 4:15 P.M. on the same day. At that time, the Exchange shall assign the applicable VWAP and report each such trade to the appropriate reporting authority, the Consolidated Tape or other, as "VWAP" trades.

The receipt and matching of orders for the Morning Session will be handled electronically through the UTS. The UTS is a system which was devised for facilitating the operational aspects of the

Morning Session. The UTS was developed by Universal Trading Technologies Corporation ("UTTC") by agreement with the Exchange. This proposal relates only to the first product of the UTS, the VWAP Trading System ("VTST<sup>TM</sup>").<sup>4</sup>

Each of the approximately 2,700 equity securities currently available for trading on the Exchange, both listed and traded pursuant to Unlisted Trading Privileges ("UTP") (except OTC securities) will be eligible for the Morning Session. However, the Exchange will publish a list of securities trading on the UTS, periodically reflecting additions and deletions. Upon implementation of this proposal, a certain number of Phlx issues will be activated for UTS trading, as a phase-in of the System, and a list of these securities will be published.

The present proposal consists of the adoption of a new rule applicable solely to the Morning Session, Rule 237—UTS Morning Session ("Rule"). In addition, Phlx Rule 101 is proposed to be amended to add the Morning Session as an exception to regular trading hours.<sup>5</sup>

The Rule is organized as follows: an introductory paragraph, followed by paragraphs: (a) Explaining reporting; (b) defining the UTS; (c) governing who the participants are; (d) explaining order entry; (e) specifying order priority; (f) defining the VWAP; (g) governing short sales in the UTS; (h) concerning disputes; (i) containing provisions relating to limitation of liability; (j) pertaining to trading halts; and (k) governing extraordinary circumstances.

UTS trades will be subject to transaction and access fees as established in the Exchange's fee schedule.

#### The Universal Trading System

The UTS will operate as a separate system, linked to Exchange systems at the reporting stage. UTS access will be available to direct subscribers, by dial-up into the UTS system, utilizing software and a log-on procedure dependent upon whether the subscriber is accessing UTS through a personal computer or main-frame system. UTS access is also available through subscribers acting as brokers. Participation is described more fully below. Thus, UTS access may include various types of computer hardware, software and handheld devices.

<sup>4</sup> VTS and UTS are trademarks of UTTC and VWAP is a trademark of the Dover Group.

<sup>5</sup> The Exchange also proposes several minor amendments to Rule 101, including placing "A.M." and "P.M." in capital letters and adding a heading to each commentary.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> See Letter from Gerald D. O'Connell, Senior Vice President, Market Regulation and Trading, Operations, Phlx, to Jennifer Choi, Division of

Market Regulation, SEC, dated July 26, 1996 ("Amendment No. 1").

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

<sup>3</sup> All times refer to Eastern Time (ET).

The System links off-floor and on-floor computer terminals to a communications base unit. The UTS base unit will: (i) Accept orders and commitments, (ii) match buyers with sellers, (iii) give execution reports to matched participants, (iv) calculate the back-up VWAP for each traded security, (v) report VWAP trades to the entering Participant, and (vi) create the necessary audit trail, recording order and commitment entry and execution of Morning Session orders. Other Exchange systems will calculate the official VWAP and report trades to the appropriate reporting authority.

Participation in the Morning Session may occur by way of a commitment from a "Committer" or an order from a "User" (collectively, "Participants"). Exchange members may participate as either Committers or Users, but may not participate as both Committer and User in the same security for the same account during the same Morning Session.

Commitments must be entered directly by UTS subscribers or through the UTS trading floor terminal at the Exchange. Committers can be either Phlx Floor Traders or Phlx Off-Floor Liquidity Providers who may commit (on a proprietary basis) to provide contra-side liquidity. UTS commitments may only be made by Exchange members, either Phlx Floor Traders or Phlx Off-Floor Liquidity Providers, who must register with the Exchange in a prescribed manner prior to acting in the capacity of a Committer. Phlx floor members qualify as Phlx Floor Traders if they are either the Phlx Specialist or Phlx Alternate Specialist in the particular stock that is the subject of the commitment. Phlx Off-Floor Liquidity Providers must be Phlx members and may only engage as Committers for their proprietary accounts. Committers will be able to choose which, if any, issues they wish to make commitments, but for each chosen issue must provide a minimum volume guarantee of 2,500 shares on each side of the market. Commitment sizes can vary on each side of the market, such as a commitment to buy 2,500 shares and sell 10,000 shares at the VWAP. Commitments may be restricted to execution against non-members only.

Commitments are only executable through the UTS. Commitments may be entered and modified in the UTS during the Order Entry Time Period and also during any other periods which the Exchange may make available for that purpose. For instance, in order to reflect the busy pre-opening time before 9:15 A.M., the Exchange may allow commitments to be entered or modified

during certain times the previous day, effective for the next Morning Session. In such an event, UTS trading still would occur only during the Morning Session; the extra time period merely provides additional time for the entry of commitments. Committers may make such contra-side liquidity commitments through the UTS as day or good-till-cancelled (GTC) commitments; GTC commitments remain in effect for each Morning Session until cancelled and must be established (and cancelled) through the enrollment process.<sup>6</sup>

Users are participants who enter orders, as opposed to commitments, into the UTS. UTS orders may only be placed for and by Users who are enrolled and activated for the UTS. Users may be either Phlx members or non-members. Users may enter orders for customer or proprietary (dealer or principal) accounts. Paragraph (c) of the Rule is proposed to be amended to reflect that Users may enter orders directly into UTS terminals as subscribers or through subscribing brokers. The participation method may affect matching priority, pursuant to paragraph (e) of the Rule. A UTS terminal may be available on the equity trading floor for the entry and reporting of UTS orders and commitments. Exchange floor members may participate as Users in their specialty issues only.

All UTS trades will be processed for clearing like any other Exchange equity floor trade. The Exchange and the Stock Clearing Corporation of Philadelphia ("SCCP") perform trade reconciliation and confirmation functions; once complete, the trades are forwarded to the National Securities Clearing Corporation ("NSCC") for clearance and settlement.<sup>7</sup> For jurisdictional and compliance purposes, Phlx membership is also required for all UTS trades, as with all Phlx trades. Thus, all Committers and Users must provide both an executing and clearing account during the enrollment process.

All non-member UTS orders entered through a broker must be entered either through a Phlx member or through a non-member broker with the

appropriate give-up and three-way agreements in place. UTS non-member orders may also be entered directly by subscribing non-members, who have both agreements with a Phlx member in place. In the three-way agreement between the Exchange, the Phlx member and the non-member User, the Phlx member must agree to be jointly and severally liable for actions of the non-member through the UTS and the non-member must agree to adhere to all applicable by-laws and rules of the Exchange. The three-way agreement is in addition to the clearing or "give-up" agreement. The give-up agreement is intended to ensure that a SCCP member, who must also be a Phlx member, has assumed responsibility for the order. Give-up agreements with non-members must be submitted in advance to the Exchange's Examinations Department, and must include a delineation of the credit limits for the respective customer.

All Users and Committers must provide proof of compliance officer review and approval of enrollment parameters prior to UTS activation.

#### *UTS Order Entry*

Only orders and commitments placed through UTS will be eligible for execution during the Morning Session; similarly, orders and commitments entered into the UTS are only eligible for execution through the UTS. Thus, UTS orders do not automatically migrate to the Exchange's regular equity trading session. UTS orders will only be accepted during the UTS order entry time period, 5:00 A.M. to 9:15:00 A.M., except that the Exchange may establish a different period respecting the UTS trading floor terminal. The proposed establishment of an equity trading floor terminal amends the original proposal and is intended to facilitate Floor Trader participation. The Phlx believes that trading floor real estate concerns<sup>8</sup> may discourage direct subscription, such that the floor terminal would provide an alternate means for access. Unlike UTS commitments, all UTS orders will only be eligible for a UTS execution on the day the order has been placed. UTS orders and commitments may be cancelled until 9:15 A.M. Confirmation of order placement and cancellation occurs electronically through the UTS.

As discussed above, Morning Session trading interest may be entered into UTS in the form of either: (i) An order

<sup>6</sup>The enrollment process is the formal mechanism by which participants specify their contractual arrangements for using the UTS, specifying the information needed to establish UTS access. UTS activation is dependent upon completing the enrollment process and submitting the requisite agreements and forms. Enrollment parameters, including GTC commitments, may be modified through procedures established by the Exchange.

<sup>7</sup>UTS trades, as all Phlx trades, will require both a Phlx and SCCP member to be involved. See Securities Exchange Act Release No. 39223 (October 8, 1997) (SR-SCCP-97-04).

<sup>8</sup>Phlx represents that physical space for additional screens or computers on the floor is extremely limited. Telephone conversation between Edith Hallahan, Director, Associate General Counsel, Phlx, and Mike Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, on December 17, 1997.

to trade as a User; or (ii) as a commitment to provide contra-side liquidity to User orders. The minimum order size for individual User orders shall be 5,000 shares, while Committers will be permitted to commit in sizes of 2,500 or greater. In addition to these minimums, all orders and commitments must be in 500 share increments, including any "AON" or "MON" designations, as defined below. This amendment eliminates reference to round-lots, meaning 100 shares. Further, the Exchange's Floor Procedure Committee ("FPC") may determine whether different sizes should be established. This ability is intended to be responsive to adjustments based on market and participant need, which would be subject to prior written notice.

In placing orders and commitments on the System, Participants will be required to provide order/commitment description and account identification information necessary for UTS to establish the priority and eligibility of orders on the System. Specifically, UTS orders and commitments are to be placed with the following designations: (i) Buy/sell; (ii) volume; (iii) stock symbol; (iv) Participant status: Committer or User; (v) Committer account status: Off-Floor Liquidity Provider, Specialist or Alternative Specialist; (vi) User account status: member or non-member, and order type (basic, cross, facilitation, constraints, restrictions); (vii) clearing account number; (viii) trade account information; and (iv) subscriber identification number.

#### *Order Types*

The UTS order types in paragraph (i) of the Rule are being amended for better organization and definition within the Rule. Eligible order types for the Morning Session are divided into three categories: basic, facilitation and cross. Basic and facilitation orders can be unconstrained, meaning executable to the extent possible, or constrained. The following two constraints are proposed: All-or-none (AON), meaning execute all shares of the order or none at all; and Minimum-or-none (MON), meaning execute at least a specified number of shares or none at all. Basic orders can also be restricted, meaning executable against non-members only.

Facilitation orders, on the other hand, are two-sided orders with an identified Phlx member contra-side, who acts as a facilitator to that order, and is known as a "Guarantor." The Guarantor definition has also been added to paragraph (c) of the Rule, which delineates the categories of access to the UTS. The contra-side may be entered together

with or separate from the facilitation order; if the sizes do not match, the remainder is unexecuted. Facilitation orders can be submitted on behalf of Phlx members or non-members. There are three types of facilitation orders. The first type is an unconditional facilitation, which is to be executed against an identified Guarantor or not at all; as such, the order is a type of cross, involving a Phlx member Guarantor. The second type of facilitation order is a conditional facilitation order, which is executable against an identified Guarantor after attempting to be executed against non-members to the extent possible. For instance, User A may enter an order designating X as its conditional Guarantor, such that if no non-member orders are matched with this order, User A is matched with X, even if other Phlx members would have matched. Third, a last resort facilitation order is executable against an identified Guarantor only after attempting to execute against all other orders and commitments to the extent possible. Extending the previous example, the last resort Guarantor X would only match with User A after all other orders and commitments have had the opportunity to match, not just non-member orders. Facilitation orders cannot be restricted to non-members in general, because they contain a contra-side.

A cross order is a two-sided order, with both sides comprised of non-member interest, with instructions to match the identified buy-side with the identified sell-side. The two sides of a cross can be entered separately, with the contra-side identified. If the sizes do not match, the remainder is unexecuted.

#### *Execution and Priority of Orders*

Orders for the Morning Session will be matched at approximately 9:16 A.M. Trades executed through the UTS are printed and cleared as Phlx transactions, executed on the Exchange and processed through SCCP, as explained above. In matching VWAP orders for execution during the Morning Session, execution priority is determined in accordance with 23 matching steps, which appear below. Commitments are not matched with other Commitments.

Generally, User orders are afforded priority by account type, then by order size (largest first); and for orders of the same size and account type, on a chronological basis by time-of-entry. As outlined below, account types are based on status as a non-member or Phlx member, type of non-member account, constraints, and direct subscription versus broker access.

Similarly, commitments are prioritized, first, on the basis of sub-account types, meaning Phlx Off-Floor Liquidity Providers then Specialists and then Alternate Specialists; then, on the basis of commitment size (largest first); and among those commitments at the same size, priority rotates among Committers with the fewest aggregate UTS shares (in all securities) matched at that time. For example, among three 5,000 share specialist commitments in stock XYZ, priority would be afforded to A who has received 10,000 shares of stock XYZ so far, then B who has 15,000 shares of TTT, and lastly to C who has 3,000 shares of XYZ and 20,000 of TTT. In the previous version of this proposal, the matching was proposed to occur on a rotational basis among those of the same size and sub-account type.

An additional amendment to the original proposal is the incorporation of a Liquidity Rotation Parameter ("LRP"), also known as the "anti-bully" rule. Even though priority is generally based on size, the LRP provides that order an commitment participation will rotate in 25,000 share increments, to more fairly allocate order flow, as opposed to filling the largest first. The LRP operates within each matching step (after step 1) to match in 25,000 share increments, moving to the next order/commitment after 25,000 shares have been matched, and then returning to the remainder of that unfilled portion once all other orders/commitments have received their first 25,000 share match. For example, where there is one large buyer ("buyer 1") for 100,000 shares and three buyers of 10,000 shares of ABC ("buyers 2-4"), without this provision, a seller of 100,000 shares would match with the buyer 1 for all 100,000 shares, thereby excluding the other buyers. Instead, the LRP results in a match of 25,000 shares for buyer 1, 10,000 shares each for buyers 2-4 (sub-totaling 55,000), 25,000 shares more for buyer 1, with the remainder of 20,000 shares going to buyer 1 (as there are no other buyers with which to rotate liquidity); the LRP ensured that buyers 2-4 participated, while buyer 1 received 70,000 shares. The proposal would permit the FPC to establish a different size (than 25,000 shares) based on operational experience, practicality and demonstrated market need.

As a follow-up to these introductory paragraphs respecting the order matching principles of UTS, the specific matching steps to be conducted in each security are outlined below. First, the following two-sided orders are matched: non-member/non-member crosses, then non-member/member unconditional facilitation orders and then member/

member unconditional facilitation orders. Any partially unmatched orders due to excess size entered by one side remains unexecuted.

Second, non-member unconstrained orders (both basic and facilitation) are matched with each other. For example, a buy of 10,000 shares of XYZ would be matched with a sell of 10,000 shares of XYZ by non-members. Within this step 2, as within all matching steps, priority is determined based on size and time of entry. Although step 2 refers to non-member unconstrained orders, including facilitation orders, unconditional facilitation orders are not matched at this step, because they have already been matched in step 1. Non-member unconstrained orders for non-member broker-dealers are matched in step 6.

Third, any remaining non-member unconstrained orders are matched with non-member constrained (AON and MON) orders. Any such non-member constrained orders not matched with the unconstrained orders left over from step 1 are then matched with other non-member constrained orders. Non-member constrained orders for non-member broker-dealers are matched in step 6.

Fourth, any remaining non-member orders from steps 2 and 3 are matched with non-member institutions' orders participating through a broker. Brokers may be members or non-members as explained in the participation and access portions of this proposal. Such non-member institutions' orders are then matched with each other. Non-member institutions entering orders directly would have participated in steps 2 or 3 above, depending on whether the order is constrained; constraints are not relevant to determining priority in step 4 among institutions participating through a broker.

Fifth, any remaining non-member orders are matched with non-member non-institution orders participating through a broker. The remaining non-member orders filtering down through each step may include unmatched orders and partially unmatched orders from all prior steps. These remaining orders are matched with the new category of orders in each step first, before that category is matched against itself. Thus, after non-member non-institution orders participating through a broker are matched against the unmatched orders of non-member orders, such non-member non-institution orders are matched with each other. Non-member non-institution orders include non-member broker-dealer orders as well as non-member,

non-broker-dealer, non-institution orders, such as retail customer orders.

Sixth, any remaining non-member orders are matched with non-member broker-dealers subscribing directly. Non-member broker-dealer orders subscribing directly are then matched with each other. Instead of dealer activity, if the non-member broker-dealer is acting as a broker, then the order would be matched in steps 4 or 5, depending on who he or she is representing as a broker.

Seventh, the matching process is ended respecting non-member orders. Thus, any remaining non-member orders that are restricted to matching with non-members only are removed; these are unmatched, except as provided in step 23 below.

Eighth, any remaining non-member conditional facilitation orders are matched with their conditional Guarantors (facilitating members). These conditional orders were first subject to matching against other non-member orders in the prior steps, and are now eligible for matching against the identified Guarantor, who is a member.

Ninth, any remaining non-member orders are matched with member orders participating through brokers. Any unmatched member orders participating through brokers are then removed.

Tenth, any remaining non-member orders are matched with orders of off-floor members. Any unmatched off-floor members' orders are then removed.

Step 11 involves matching any remaining non-member orders with order of Phlx Floor Traders. Any unmatched Phlx Floor Traders' orders are then removed. This category includes one-sided orders (as opposed to commitments) of Specialists and Alternate Specialists, who are permitted to trade as a "dealer" in specialty issues.

Steps 12 through 14 introduce commitments into the matching process. In step 12, any remaining non-member orders are matched with commitments of Phlx Off-Floor Liquidity Providers. The remaining commitments of Phlx Off-Floor Liquidity Providers are then removed. In step 13, any remaining non-member orders are matched with commitments of Specialists; unmatched Specialist commitments are then removed. In step 14, any remaining non-member orders are matched with commitments of Alternate Specialists; unmatched Alternate Specialist commitments are then removed.

In step 15, any remaining non-member orders are matched with member facilitation orders (those with conditional or last resort Guarantors). The other type of facilitation order, an

unconditional facilitation, is already matched in step 1.

In step 16, non-member last resort facilitation orders are matched with their identified last resort Guarantors.

Step 17 represents the end of non-member matching. Any remaining non-member orders are unmatched, except as provided in step 23 below.

In step 18, Phlx member conditional facilitation orders are matched with their identified conditional Guarantor. Again, the unconditional facilitation orders have already been matched; the last resort facilitation orders are matched later in the process.

Step 19 involves extensive Phlx member matching. All remaining member orders are matched with each other, as long as they are not restricted to matching against non-members only. This includes the following types of Phlx member orders from steps 9–11 and 15 above: Phlx member orders participating through brokers, Phlx off-floor member orders, Phlx floor members' orders, and member last resort facilitation orders.

Step 20 involves matching Phlx member orders with commitments that have not been restricted to matching against non-member only. First, any remaining Phlx member orders are matched with commitments of Off-Floor Liquidity Providers, and then with commitments of Specialists and Alternate Specialists. Unmatched commitments are then removed.

In Step 21, Phlx member last resort facilitation orders are matched with their identified last resort Guarantor.

Step 22 signals the end of the whole matching "round" in a security. Any remaining Phlx member orders and commitments are unmatched, except as provided in step 23.

Step (23), the last step, involves performing matching rounds, which amends the original proposal. Specifically, if any unmatched orders remain, the largest unsatisfied constrained order is permanently removed, the matches after step 1 are unmatched and the matching process starts again; among unsatisfied orders of the same size, Phlx member orders would be removed before non-member orders, and among two Phlx members (or non-members), the latest in time is removed first. Additional matching rounds occur, each removing another unsatisfied constrained order, until no unsatisfied constrained orders remain. Matching rounds are intended to maximize the number of executions.

#### VWAP

The VWAP that the Exchange shall assign to each eligible security, which

shall be derived daily and publicly disseminated promptly following calculation at 4:15 P.M. for each security where a UTS match occurred that day, will be calculated on the basis of those transactions reported during the regular trading session to the appropriate reporting authority. Generally, consistent with Phlx Rule 111, all UTS matches create a binding contract. However, in the case where a transaction occurs in the Morning Session in a security which has not opened for trading by 3:00 P.M. on the primary market, the respective Morning Session transaction will be voided and a report to that effect will be sent immediately to all matched Participants.

In general, the VWAP for each eligible security shall be calculated by: (i) Utilizing all regular way trades that appear on the Consolidated Tape (including sold sales and late sales<sup>9</sup>) effected from the opening of the regular trading session and printed prior to 4:15 P.M. by the appropriate reporting authority,<sup>10</sup> (ii) multiplying each respective reported price by the total number of shares traded at that price; (iii) adding together each of these calculated values, compiling an aggregate sum; and (iv) dividing the aggregate sum by the total number of reported shares used in item (i) in the security. The resulting VWAP will be reported in the form of a fraction, rounded to the nearest 1/256th.

#### Reporting

All UTS transactions will first be reported to the reporting authority at approximately 9:20 A.M. as a single volume print including all matches in all securities. The morning print for all UTS matches will occur by way of an administrative message over the Consolidated Tape reflecting total volume in Exchange listed securities. For example, that message would indicate that 3 million shares traded through the UTS at the VWAP. The morning print is intended to notify investors regarding pre-opening volume.

Participants, under normal circumstances, will also be notified of their levels of participation by 9:20 A.M. UTS transactions will be reported to the entering subscriber in the form of

automated reports reflecting the number of shares traded by the Participant (whether User or Committer) through the UTS in each issue.

Promptly following calculation of the final VWAP at approximately 4:20 P.M., trades are assigned that day's VWAP for that security and will, at that time, be reported trade-by-trade to the appropriate reporting authority. The Exchange will continuously calculate the VWAP throughout the trading day for each issue available for trading. The final VWAP will be available through the System to UTS subscribers who received Morning Session executions. Each Morning Session match, once a VWAP is assigned, constitutes a completed transaction for the purpose of reporting the trade to the appropriate reporting authority.

End-of-day prints will normally be reported promptly following calculation of the final VWAP at 4:15 P.M. and, unlike the morning print, the end-of-day prints will be printed on a trade-by-trade basis representing all matches that morning. Each print will reflect a matched trade and the corresponding VWAP. These trades will be reported to the Consolidated Tape with the sale condition "B" indicating average weighted pricing, which will distinguish VWAP trades from other transactions that may possibly be reported after the close (such as after-hours, crossing session, or late sales transactions). Thus, these trades will not impact the determination of the last sale price in a security. Because reporting is trade-by-trade, if no UTS trade occurred that day, the final VWAP will not be reported to the Consolidated Tape that day.

The UTS will not disseminate or disclose orders or commitments, including UTS bid/ask sizes, prior to the Morning Session match, nor UTS imbalances remaining after the Morning Session match, except to the entering Participant. The purpose of this anonymity is to safeguard against dissemination to any other participant or to the marketplace the existence of executed or unexecuted orders, which, in turn, could, if disseminated, influence the market after the opening of the regular trading day.

#### Other Provisions

Pursuant to paragraph (h) of the Rule, disputes respecting Morning Session participation, or eligibility of orders or participants, are to be resolved by the Exchange, in accordance with Phlx Rule 124.

The Exchange's liability respecting the UTS is limited pursuant to Phlx By-Law Article 12-11 and paragraph (i) of

the Rule. Thus, the Exchange is not liable for any damage arising from the use of the UTS. Specifically, this provision states that pursuant to By-Law Article 12-11, the Exchange shall not be liable for any damages, claims, losses or expenses caused by any errors, omissions or delays resulting from any act, condition or cause beyond the reasonable control of the Exchange, including but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction arising from the use of the UTS, the calculation of the VWAP or any and all other matters respecting the operation of the System or Morning Session.

With respect to trading halts, the Rule is not intended to limit the ability of the Exchange to otherwise halt or suspend trading in any stock traded through the UTS. Further, as stated in paragraph (k) of the Rule, a new provision respecting extraordinary market conditions, the Floor Procedure Committee may determine, due to extraordinary circumstances, to adjust or modify any of the times referenced by this Rule respecting the order entry period, order matching period or any aspect of the transaction reporting procedures. In addition to fast market conditions, for purposes of this paragraph, extraordinary circumstances also include systems malfunctions and other circumstances that limit the Exchange's ability to receive, disseminate or report UTS information in a timely and accurate manner.

Lastly, short sales are governed by paragraph (g) of the Rule, which states that Morning Session orders and commitments must be appropriately marked pursuant to Phlx Rule 455, but are exempt from the "tick test" short sale restrictions of Rule 455. Further, positions resulting from Morning Session transactions are effective for the purpose of determining long or short status, immediately upon notification to the participant of a UTS execution, notwithstanding that the VWAP has not yet been determined.

The specific text of the proposed rule change is available at the places described 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

<sup>9</sup> A late sale is a transaction which is a correct last sale but is publicly disseminated later than is generally required. Generally, transactions are required to be publicly disseminated within 90 seconds after the execution. A sold sale designates a transaction appearing on the Consolidated Tape out of its proper sequence.

<sup>10</sup> However, prints representing trades executed after regular trading hours (9:30 A.M. to 4:00 P.M., such as the Phlx's Post Primary Session ("PPS")) will not be utilized in the VWAP calculation after 4:02 P.M.

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*

During the past ten years, listed equities trading volume has experienced explosive growth, from 18 billion shares in 1982 to a projected 140 billion shares in 1997, representing a sevenfold increase in 15 years. A contributing factor to this volume surge is the increasing presence of institutional trading. The Exchange expects that over 11 million trades of 5,000 shares or more will be executed in the markets during this year.

Although institutional trading of block orders often consists of exchange member firms trading for their proprietary accounts, the vast majority of such trading is for the benefit of non-member accounts. The common thread among most of these non-member block orders is that the investment focus is long-term, rather than short-term. When the investment focus is long-term, intra-day price drops occurring when positions are purchased or sold are problematic "bumps" in the road. Many long-term investors prefer to avoid such drops, even though an opportunity to buy at the low or sell at the high may be lost. Smoothing over these bumps would be beneficial to long-term investors. In this vein, long-term investors often link the ability to secure fair prices to the ability to retain anonymity while "working" large orders.

On the other hand, member firms typically use intra-day volatility as an opportunity to trade in the short term. Such firms do so either as facilitator for their customer orders, arbitrageur or as registered floor traders. Many of these traders welcome the opportunities presented by additional volume and volatility. Thus, diverting such intra-day risks from long-term investors (who seek to avoid such risks) to proprietary traders (who seek to assume such risks) is an important benefit of the proposed Morning Session for the execution of large-sized securities on a VWAP basis.

By placing intra-day price risks on those most willing, and most suited, to accept such risks, the Morning Session will serve both institutional investors and proprietary traders. The advantages of the Morning Session will be available to all qualified market participants for

eligible sized orders. Institutions which will particularly benefit from the session include corporate pension funds, state and municipal pension funds, major money managers and mutual funds. In addition to offering fair pricing, the session should also be cost effective, as it will often replace the costs of working a VWAP or regular order over the course of a day or longer, with the ease of a single execution and single transaction charge.

In its role as a national securities exchange and trading venue for equity securities, the Phlx seeks to provide liquidity and a marketplace for all types of investors. In addition to its current market structure and products, the Exchange endeavors to provide new products and systems, thereby enhancing liquidity, while preserving full investor protection. The UTS adds an important dimension to these goals by way of the VTS, which offers institutional money managers, broker-dealers and investors the ability to receive large executions more efficiently, with less market impact. The VTS is intended to provide liquidity, complete anonymity, and end-to-end data security in an electronic environment. All VTS trades will be priced at the VWAP, which the Phlx believes is regarded industry-wide as providing a useful execution price measurement at a reasonable cost. Institutions have been receiving VWAP executions since 1985. The VTS is intended to standardize this pricing method so that investors can obtain "at market returns" and implement investment strategies utilizing the new standard VWAP.

The Phlx believes that the UTS is an innovative new automated securities trading system that complements the existing auction market. By providing an automated matching system with floor traders as well as off-floor traders serving as facilitators for executions on a VWAP basis, the UTS incorporates the principles of an auction market with the automation benefits of an electronic execution system. Thus, the Exchange believes that the UTS, as a new data processing and communication technique, creates the opportunity for more efficient and effective market operations, consistent with Section 11A(a)(1)(B) of the Act,<sup>11</sup> by providing increased execution alternatives to investors. By combining pricing in terms of a VWAP with the ability to access block-sized liquidity commitments, and by providing the ability to anonymously effect such block-sized orders prior to the opening

of the regular session, the Exchange's Morning Session should particularly accommodate institutional customer interests.

The Exchange proposes to adopt the Rule in order to establish and govern the UTS. In general, the UTS will accept orders and commitments of established minimum volumes (*i.e.*, 5,000 shares for orders and 2,500 shares for commitments), executing orders against other orders and commitments at the VWAP. The VWAP will be assigned to each matched trade and reported to the appropriate reporting authority, including trade-by-trade volume and the VWAP. Consistent with Rule 11Aa3-1 under the Act,<sup>12</sup> the Exchange will thereby provide for the collection and dissemination of transaction reports containing, among other things, the price of the security. The Exchange believes that the proposed reporting structure provides transparency to Morning Session executions, specifically identifying the total volume executed before the opening, first as a single print and, once the VWAP is calculated, trade-by-trade. The Exchange recognizes that within the meaning of Rule 11Ac1-1 under the Act,<sup>13</sup> bids/offers will not be utilized in the UTS, because all orders are executable only at the VWAP, rendering bids/offers meaningless.<sup>14</sup>

Because the System's matching process should be complete prior to the time of the opening of the Phlx market (and other equity markets) at 9:30 A.M., the Exchange believes that the issue of the integration of UTS orders into the auction market is not raised by the proposal. Specifically, the Exchange does not believe that the UTS raises market integration issues, such as the role of the Intermarket Trading System ("ITS") or integrating booked orders, because UTS matching would occur pre-opening, when the markets are not yet open for regular trading. Therefore, the Exchange concludes that the operation of the UTS is outside of the scope of the ITS Plan, which is based on access across various markets to continuous two-sided quotations.<sup>15</sup> As a result, the

<sup>12</sup> 17 CFR 240.11Aa3-1

<sup>13</sup> 17 CFR 240.11Ac1-1

<sup>14</sup> Accordingly, the Exchange has requested exemptive relief from the requirements of Rule 11Ac1-1 under the Act. See Letter from Gerald D. O'Connell, First Vice President, Phlx, to Larry E. Bergmann, Assistant Director, Division of Market Regulation, SEC, dated February 28, 1996. In this letter, the Exchange has also requested interpretive relief regarding Rule 11A2-2(T) under the Act, 17 CFR 240.11A2-2(T) and exemptive relief from Section 10(a) of the Act, 15 U.S.C. § 78j(a). A revised letter, which reflects the changes made to the proposed rule change as a result of Amendment No. 2, will be submitted separately.

<sup>15</sup> See ITS Plan, Section 6.

<sup>11</sup> 15 U.S.C. § 78k-1(a)(1)(B)

Exchange believes that UTS pre-opening matching does not implicate the intermarket price protection obligations of the ITS Plan, as no UTS price is calculated until the end of the trading day, nor does UTS order flow impact or create bids/offers for purposes of other market center quoting during the trading day.<sup>16</sup>

Further, the assignment of a final VWAP to Morning Session executions would occur after the close of trading. It is possible that an order on the Phlx specialist's limit order book may remain unexecuted at the end of a trading day at a price equal or better than the VWAP in that security, meaning UTS orders would be executed at that price. However, the Exchange does not believe that this presents a market fragmentation concern, because the booked order was never eligible for the VWAP or a UTS execution, as it was not entered as a UTS order; it may not have been eligible for a UTS execution due to size or account status. Further, that booked order was entered for execution at a specified limit price or better, not at the VWAP, which could have resulted in a different price. For these reasons, no expectation will be created for such orders to look to the UTS or VWAP execution price; orders entered for execution on the Phlx will continue to be governed by existing rules. Requiring that such regular Phlx non-UTS orders be protected in light of only better VWAP prices after the close is unfair<sup>17</sup> and illogical, as these orders would then be executable after the close; not subject to the risk of a different VWAP; and in effect, guaranteed a price based on prints in a system for which the order was not eligible and in which it was never entered. In fact, this would disadvantage unexecuted UTS orders.

Further, the Exchange believes that UTS orders do not raise price priority issues, because all orders have been entered for execution at the VWAP. The UTS will execute orders based on the priority principles enumerated in the Rule, which, according to the Exchange, is consistent with Section 11 of the

Act<sup>18</sup> and the rules thereunder, in that specialist activity will be consistent with Section 11(a)(1)(A) of the Act, members will generally yield priority to non-members pursuant to Section 11(a)(1)(G) of the Act, and Committers will fulfill the obligations of Section 11(b) of the Act. Phlx Off-Floor Liquidity Providers receive priority over Floor Traders in order to encourage commitments. Because Phlx Floor Traders' priority is last-in-line, no issue of Specialist trading ahead of customers in raised by the UTS. As amended, the Rule affords priority to orders by account type (meaning, except crosses, non-member before member, type of non-member account, constraints, and direct subscription versus broker access); then by order size (largest first); and for orders of the same size and account type, on a chronological basis by time of entry.

The UTS will operate as a facility of the Exchange within the meaning of Section 3(a)(2) of the Act,<sup>19</sup> in that the UTS utilizes Phlx equipment and personnel, floor trader participation, and SCCP to process UTS trades. Thus, Morning Session trades will be appropriately regulated and reported as Exchange trades. The Phlx notes that this is similar to the regulatory treatment afforded to after-hours trading sessions on the Exchange as well as other exchanges.<sup>20</sup>

As previously stated, the VWAP will be calculated on the basis of those transactions reported by the appropriate reporting authority for the respective security from the beginning of the regular trading session until 4:15 P.M. In the case where a transaction occurs in the Morning Session in a security which has not opened for trading that day for any reason in the primary market by 3:00 P.M., the respective Morning Session transaction will be voided and a report to that effect will be immediately sent. The Exchange believes that establishing a specific time frame by which a security must trade gives further assurance that the VWAP will consist of a representative sample of trades from which to derive a calculation. Additionally, this provision will also serve the important function of prompt notice that the Morning Session transaction will be voided if the primary market has not yet opened in a particular issue. Although written or electronic confirmation will follow, Participants should be aware that this

rare exception to the creation of a binding contract through the UTS may occur by observing that an issue failed to open on its primary market. The 3:00 P.M. cut-off provides an objective limitation on the VWAP calculation, which notifies the User that a representative VWAP cannot be calculated for that day. The Exchange has determined that the 3:00 P.M. provision is preferable to calculating a VWAP based on the previous day's pricing, because an important purpose of the VWAP is to incorporate and average that day's price movement.

With respect to trading halts, if a security opens for trading but is the subject of a halt and does not resume trading for the remainder of the day, the Morning Session transaction is based on the prints that occurred before the halt. The Exchange realizes that a security may only be open for a short time before it is halted; however, the Exchange believes that for the purposes of the UTS VWAP calculation, trading that occurs prior to a halt forms a reasonable basis for calculating a VWAP for that day, even if the security does not reopen that day. A significant amount of price discovery is involved in an opening print, such that it provides an appropriate VWAP measure, which is preferable to voiding that day's UTS trades. For these reasons, the Exchange has determined that even a few minutes of trading provides adequate pricing information, which is preferable to voiding UTS trades and consistent with the creation of a binding contract.

Nevertheless, the Exchange maintains that the Morning Session execution is an executed Exchange contract, with only the one unusual circumstances enumerated above. The Exchange notes that although utilizing the VWAP as a pricing mechanism is new to exchange trading, block trades as well as certain Nasdaq trades are currently reported as average weighted pricing trades.<sup>21</sup>

With respect to access to the System, as stated above, Participants may be either Users, who may enter orders, or Committers, who must be Exchange members. Because Users may be non-members of the Exchange, qualified non-member access to the UTS is proposed. The Exchange believes that the UTS provides adequate controls regarding limited non-member access to the System. For computer processing purposes, one control mechanism requires SCCP account information for UTS trades, just as for all Phlx equity trades. For disciplinary jurisdiction and compliance purposes, the second

<sup>16</sup> The Exchange notes that, in comparison, the Optimark System, which would operate as a periodic call market and was recently approved by the Commission, does give rise to ITS Plan issues. See Securities Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997) (File No. SR-PCX-97-18) (order granting approval to PCX Application of the OptiMark System).

<sup>17</sup> In fact, if Phlx orders were guaranteed an execution related to the UTS VWAP, various market manipulation concerns could arise; for instance, buy orders in a surging stock could unfairly benefit from a VWAP that the buyer knows will be lower than the last sale in that security.

<sup>18</sup> 15 U.S.C. § 78k.

<sup>19</sup> 15 U.S.C. § 78c(a)(2).

<sup>20</sup> See, e.g., Securities Exchange Act Release No. 29237 (May 24, 1991) (File Nos. SR-NYSE-90-52 and SR-NYSE-90-53 establishing an off-hours trading facility).

<sup>21</sup> Such trades are currently reported using the indicator "W."



control mechanism over non-member access to the UTS is the requirement of a three-way agreement. As described above, in the three-way agreement, the Phlx member must agree to be jointly and severally liable for actions of the non-member through the UTS; and the non-member must agree to adhere to all applicable by-laws and rules of the Exchange. This is intended to provide a jurisdictional basis for disciplinary action against such non-member, to the same degree as if the order were placed directly. The required agreement with the non-member provides that the Exchange has the right to terminate access to the UTS, without prior notice for any reasons, or no reason whatsoever. Because both a three-way and give-up agreement are required, termination of either agreement necessarily results in the Exchange's ability to terminate access to the UTS. In sum, the Exchange believes that these requirements ensure adequate controls over non-member access, including Exchange supervision of and jurisdiction over non-member Users. The Exchange notes that similar non-member access has been afforded to other exchange system.<sup>20</sup> Utilizing SCCP facilities and requiring Exchange agreements with non-members is intended to facilitate coordination with persons engaged in clearing and settling these transactions, consistent with Section 6(b)(5) of the Act.<sup>23</sup>

Section 10(a) of the Act governs short sales in securities, while Rule 3b-3 under the Act<sup>24</sup> defines the term "short sale" as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller." Further, Rule 3b-3 provides that if a person has "purchased, or has entered into an unconditional contract, finding on both parties thereto, to purchase" a security, then that person shall be deemed to own that security.<sup>25</sup> Separately, the Exchange

has requested exemptive relief from the "tick test" of Section 10(a) of the Act.<sup>26</sup> Thus, pursuant to paragraph (g) of the Rule, Morning Session orders and commitments should not be subject to the tick test/short sale restrictions of Phlx Rule 455. Nevertheless, UTS orders must be marketed in accordance with that rule. Further, because a long position creates an irrevocable contract, a purchase during the Morning Session may be followed by sales during the regular trading session in that security, without such sales deemed to be short sales.

Lastly, the Exchange proposes to amend Phlx Rule 101 to adopt Commentary .03 reflecting the Morning Session and providing reference to the Rule. The Exchange also proposes minor changes to Rule 101 for clarity and correction. Specifically, "A.M." and "P.M." would appear in capital letters consistently throughout the rule, and there would be a heading for each commentary. The Exchange believes that these changes to Rule 101 should both correct and clarify its provisions.

For the reason stated above, the Phlx believes that the proposal to operate a Morning Session utilizing the UTS is consistent with the Act, and particularly with Sections 6, 11 and 11A thereof. Specifically, the proposal is consistent with Section 6(b)(5) of the Act, 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, by providing an automated order entry and execution system for securities traded during the Morning Session, based on a comprehensive rule and extensive matching algorithm.

The Exchange anticipates that significant institutional volume could be attracted to the Phlx, which should, in turn, add liquidity to both the Morning Session as well as to the Phlx's regular trading session. The Exchange believes that the UTS provides an important new pricing mechanism for exchange trades the VWAP. Further, the Exchange believes that the Morning Session should provide a unique opportunity to electronically submit block-sized orders for automatic matching before the regular opening at 9:30 A.M. Thus, the UTS should perfect

the mechanism of a free and open market and a national market system. The proposal at hand employs specific procedures and safeguards designed to protect investors and the public interest, prevent fraudulent and manipulative acts and practices, and promote just and equitable principles of trade. These procedures include specific execution priority parameters, order entry specifications and Exchange surveillance procedures (separately submitted) designed to monitor UTS transactions. The Exchange also believes that because the Morning Session is limited to a once-per-day session and adequately provides for transparency, despite the requested limited exemptive relief, the proposal is consistent with the Act.

#### *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 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.

### **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 submission, all subsequent amendment, 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

<sup>22</sup> See Securities Exchange Act Release No. 35030 (November 30, 1994) (File No. SR-CHX-93-19) (order approving Chicago Match and, at n.70 therein, reference to the New York Stock Exchange's SuperDOT).

<sup>23</sup> 15 U.S.C. § 78f(b)(5).

<sup>24</sup> CFR 240.30b-3.

<sup>25</sup> The Exchange understands that proposed amendments to these provisions provide that if the ownership of a security is claimed by virtue of having entered into a contract to purchase it, the contract must involve a fixed, currently ascertainable amount of the security at a fixed, currently ascertainable price. Separately, the Exchange requested that an exemption for the Morning Session be incorporated into these proposed amendments. See letter from Gerald D. O'Connell, First Vice President, Phlx, to Larry E. Bergmann, Assistant Director, Division of Market Regulation, SEC, dated November 9, 1995.

<sup>26</sup> See *supra* note 14.



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 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 the Exchange. All submissions should refer to File No. SR-Phlx-96-14 and should be submitted by January 21, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>27</sup>

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

[FR Doc. 97-33992 Filed 12-30-97; 8:45 am]

BILLING CODE 8010-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Thresholds for Implementation of Trade Agreements Act

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Adjustment of thresholds for implementation of Trade Agreements Act.

**SUMMARY:** Executive Order 12260 requires the U.S. Trade Representative to set the U.S. dollar thresholds for application of Title III of Trade Agreements Act of 1979 (19 U.S.C. 2511 et seq.), which implements U.S. obligations under the World Trade Organization (WTO) Agreement on Government Procurement and Chapter 10 of the North American Free Trade Agreement (NAFTA). These obligations apply to procurements valued at or above specified U.S. dollar thresholds. The U.S. Trade Representative has determined that, effective January 1, 1998, the thresholds will be as follows:

#### 1. WTO Agreement on Government Procurement

A. Central Government Entities Covered by the WTO Agreement on Government Procurement (as listed in United States Annex 1 of the Agreement):

- Procurements of goods and services—\$186,000
- Procurements of construction services—\$7,143,000

B. Sub-Central Government Entities Covered by the WTO Agreement on Government Procurement (as listed in United States Annex 2 of the Agreement):

- Procurement of goods and services—\$507,000
- Procurement of construction services—\$7,143,000

C. All Other Government Entities Covered by the WTO Agreement on Government Procurement (as listed in United States Annex 3 of the Agreement):

- Procurement of goods and services—\$571,000
- Procurement of construction services—\$7,143,000

#### 2. Chapter 10 of the NAFTA

A. Federal Government Entities (as listed in the United States Schedule to Annex 1001.1a-1 of the NAFTA):

- Procurements of goods and services—\$51,450
- Procurements of construction services—\$6,688,500

B. Government Enterprises (as listed in the United States Schedule to Annex 1001.1a-2 of the NAFTA):

- Procurements of goods and services—\$257,250
- Procurement of construction services—\$8,232,000

**FOR FURTHER INFORMATION CONTACT:** Rebecca Reese, Office of WTO Affairs (202-395-3063), Office of the United States Trade Representative, 600 Seventeenth Street, NW, Washington, D.C. 20508.

**Frederick L. Montgomery,**  
Chairman, Trade Policy Staff Committee.  
[FR Doc. 97-34142 Filed 12-30-97; 8:45 am]  
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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the information collection entitled "Study of the First There, First Care National Campaign: An Intervention to Save Lives" (previously referred to as the

"Bystander Care Program") was published on February 3, 1997 [62 FR, page 5066-5067] and on information collection entitled "Development of Improved Driver Interview Procedures for Police Use at Checkpoints" was published on February 19, 1997 [62 FR 7494-7495].

**DATES:** Comments must be submitted on or before January 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Edward Kosek, NHTSA Information Collection Clearance Officer at (202) 366-2589.

#### SUPPLEMENTARY INFORMATION:

##### National Highway Traffic Safety Administration (NHTSA)

*Title:* Study of the First There, First Care National Campaign: An Intervention to Save Lives.

*OMB No.:* 2127-NEW.

*Type of Request:* Approval of a New Information Collection.

*Affected Public:* Individuals ages 16 and older living in households with telephones within a population of two rural sites.

*Abstract:* NHTSA will conduct a telephone survey as a major component of a two-site evaluation of its "First There, First Care National Campaign" Program. In accordance with the agency's mandate to reduce fatalities and economic loss resulting from motor vehicle crashes, this Program was established to encourage passerby to stop at rural crash sites, render life-saving assistance, and summon emergency medical services (EMS). The program is designed to raise public awareness of the importance of bystander care, and to teach the few basic skills necessary to recognize an emergency, start victims' breathing, stop victims' bleeding, and contact EMS. The data from the survey will be used to evaluate the extent to which the "First There, First Care" messages have reached the public in targeted areas, the extent to which these messages were successful in changing attitudes towards providing emergency care, and the extent to which the program improved knowledge needed to successfully provide emergency care.

*Estimated Annual Burden Hours:* 164 hours.

*Estimated Number of Respondents:* 640.

*Need:* The findings will be used to judge the efficacy of the "First There, First Care" Program. NHTSA will draw on this information when considering continuation, refinement, and expansion of the "First There, First Care" Program.

<sup>27</sup> 17 CFR 200.30-3(a)(12).