

provision for companies with more than one class of common stock in which more than one issue is below the new minimum. It provided that for such companies, only the class with the most shares outstanding would pay the new minimum, while the other class(es) would continue to be charged at the lower minimum rates previously in effect.

The Exchange inadvertently neglected at that time to extend the relief for multi-class companies to non-U.S. issuers. Realizing that consistency on this point is appropriate, the Exchange proposes to apply the relief for multi-class issuers to non-U.S. companies as well.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(4) <sup>4</sup> that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

## 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

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>5</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>6</sup>

The Commission notes that under Rule 19b-4(f)(6)(iii),<sup>7</sup> the proposed does not become operative for 30 days after date of its filing, or such shorter time as

the Commission may designate if consistent with the protection of investors and the public interest. The Exchange requested that the Commission designate that the proposed rule change does not become operative for 15 days after the date of its filing so that the benefits of the proposed rule change are available to closed end funds more quickly. The Commission believes that designating the operative date of the proposal for 15 days after the date of the proposal's filing is consistent with the protection of investors and the public interest.<sup>8</sup>

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

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the SR-NYSE-2001-21 and should be submitted September 17, 2001.

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

**Jonathan G. Katz,**

*Secretary.*

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<sup>8</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44726; File No. SR-Phlx-2001-66]

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Extend the Hours During Which Certain Orders May Be Executed on PACE

August 20, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") <sup>1</sup> and Rule 19b-4 <sup>2</sup> thereunder, notice is hereby given that on July 16, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. On August 8, 2001, the Exchange amended the proposal.<sup>3</sup> The Phlx filed the proposal pursuant to section 19(b)(3)(A) of the Act <sup>4</sup> and Rule 19b-4(f)(5) <sup>5</sup> thereunder, rendering the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested person.

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

The Exchange proposes to amend Supplementary Material .17 to Phlx Rule 229 to extend the time period during which certain orders may be executed on the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE"). The text of the proposed rule change is below. Additions are in *italics*; deletions are in *brackets*.

## Rule 229. Philadelphia Stock Exchange Automated Communication and Execution System (PACE)

\* \* \* \* \*

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

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

<sup>3</sup> See August 7, 2001 letter from Carla Behnfeldt, Director, Legal Department, New Product Development Group, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), SEC, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaces and supersedes the original proposal. The Phlx made technical changes to the proposed rule language subsequent to filing Amendment No. 1. Telephone conversation between Edith Hallahan, Deputy General Counsel, Phlx, and Alton Harvey, Office Chief, Office of Market Watch, Division, SEC, August 20, 2001.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(5).

<sup>4</sup> 15 U.S.C. 78f(b)(4).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

## Supplementary Material:

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.17 [Except for transactions in Nasdaq-100 Index Tracking Stock: (a) Orders received by 4:00 p.m. Eastern Time] *Orders received by the end of the Primary Trading Session*, as determined electronically by the PACE system, are eligible for execution. [(b)] Orders received after such time will be rejected and returned to the order entry firm.[, and (c)] From 4:00 to 4:15 p.m., Eastern Time, PACE may *also* be used as a routing system for PPS eligible orders. [Orders in Nasdaq-100 Index Tracking Stock received by 4:15 p.m. Eastern Time as determined electronically by the PACE system are eligible for execution.]

\* \* \* \* \*

## 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 Phlx 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 Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

The Phlx proposes to amend Supplementary Material .17 to Phlx Rule 229 to provide for the eligibility for execution of PACE orders received during the Primary Trading Session for that equity security. The rule currently provides only that orders for transactions in Nasdaq-100 Index Tracking Stock ("QQQ")<sup>6</sup> received by 4:15 p.m. Eastern Time<sup>7</sup> are eligible for

execution. The proposed rule change would eliminate the existing specific reference to QQQ and would provide for eligibility for PACE execution of orders in any security if such order was received during the Primary Trading Session for that security. The rule is intended to accommodate unlisted trading privileges ("UTP") trading in any securities for which primary market trading hours may extend beyond 4:00 p.m. without requiring specific references to the PACE rule for each such security. Various equity securities, such as QQQ, trade beyond 4:00 p.m.; QQQ, for example, trades until 4:15 p.m.

Recently, the SEC approved SR-Phlx-2001-1,<sup>8</sup> which amended Phlx Rule 101, Hours of Business. As revised, Phlx Rule 101 provides that the "Primary Trading Session" for equity securities on the floor of the Exchange will be the same hours as the primary market on which the security is traded. The revised rule accommodates the trading of new securities via unlisted trading privileges, which may trade beyond 4:00 p.m. on the primary market. The current proposed rule accomplishes the same for those orders eligible for execution on PACE.

#### 2. Statutory Basis

the Phlx believes the proposed rule change is consistent with section 6 of the Act<sup>9</sup> in general, and furthers the objectives of section 6(b)(5)<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, by clarifying the hours that PACE is available for equity securities.

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

the Phlx does not believe that the proposed rule change would 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

The foregoing proposal has become effective pursuant to section 19(b)(3)(A) of the Act,<sup>11</sup> and Rule 19b-4(f)(5)<sup>12</sup> thereunder, in that it effects a change in an existing order-entry or trading system of a self-regulatory organization that does not: (1) Significantly affect the protection of investors or the public interest, (2) impose any significant burden on competition, or (3) have the effect of limiting the access to or availability of the system.

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 in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2001-66 and should be submitted by September 17, 2001.

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

Jonathan G. Katz,  
Secretary.

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<sup>6</sup> The Nasdaq-100<sup>®</sup>, Index<sup>®</sup>, Nasdaq<sup>®</sup>, The Nasdaq Stock Market<sup>®</sup>, Nasdaq-100 Shares<sup>SM</sup>, Nasdaq-100 Trust<sup>SM</sup>, Nasdaq = 100 Index Tracking Stock<sup>SM</sup>, and QQQ<sup>SM</sup>, are trademarks or service marks of The Nasdaq Stock Market, Inc. (Nasdaq) and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index<sup>®</sup>, (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust<sup>SM</sup>, or the beneficial owners of Nasdaq-100 Shares<sup>TM</sup>. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

<sup>7</sup> All references to time in the proposal are Eastern Time.

<sup>8</sup> Securities Exchange Act Release No. 44213 (April 23, 2001), 66 FR 22058 (May 2, 2001).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(5).

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