

notes held by at least 400 holders be required to be outstanding when trading begins. These criteria should help ensure that a minimum level of liquidity will exist in each series of index-linked exchangeable notes to allow for maintenance of fair and orderly markets. The delisting criteria also allows the Exchange to consider suspension of trading and the delisting of a series of index-linked exchangeable notes if an event were to occur that made further dealings in such series inadvisable. This will give the Phlx flexibility to delist index-linked exchangeable notes if circumstances warrant such action. Further, Phlx rules have specific criteria that allow them to delist if there is fewer than 50,000 notes issued and outstanding, or if the market value of the index-exchangeable notes is less than \$100,000. This should ensure a minimum level of liquidity for these products. Accordingly, the Commission believes that the rules governing the trading of index-linked exchangeable notes, consistent with Section 6(b)(5) of the Act,<sup>25</sup> provide adequate safeguards to protect investors and the public interest. While the index-linked exchangeable notes have certain call and redemption features that make them different from other products, the Phlx has addressed any concerns by adopting the existing criteria used in other index related products. In addition, the Phlx will highlight these different features in the circular to members.

#### *D. Dissemination of Information*

The Commission believes that the value of index-linked exchangeable notes that the Exchange proposes to disseminate will provide investors with timely and useful information concerning the value of the index-linked exchangeable notes based on current information regarding the value of the Underlying Index. The value of the Underlying Index will also be publicly disseminated. This information will be disseminated and updated every 15 seconds during regular Phlx trading hours of 9:30 am to 4:00 pm, Philadelphia time.

#### *E. Surveillance*

The Commission believes that the surveillance procedures developed by the Phlx for index-linked exchangeable notes should be adequate to address concerns associated with the listing and trading of such notes. In this regard, the Phlx has developed procedures to monitor activity in index-linked exchangeable notes to identify and deter improper trading activity.

The Commission also notes that concerns are raised when a broker-dealer is involved in the development and maintenance of an Underlying Index upon which a product, such as index-linked exchangeable notes is based, in that case, the broker-dealer and its affiliate should have procedures designed specifically to address the improper sharing of information. The Commission notes that the Exchange requires the implementation of procedures that are satisfactory to the Exchange to prevent the misuse of material, non-public information regarding changes to Underlying Stocks of an Underlying Index in a particular series of index-linked exchangeable notes. In addition, the Commission notes that if a broker-dealer is involved in developing or maintaining an Underlying Index, the Index must be calculated by a third party who is not a broker-dealer.<sup>26</sup> The Commission believes that such information barrier procedures will address the unauthorized transfer and misuse of material, non-public information.

#### *F. Scope of the Commission's Order*

The Commission is approving the Exchange's proposed listing and trading standards for the index-linked exchangeable notes as discussed herein. Index-linked exchangeable notes addressed in this order can be listed pursuant to Rule 19b-4(e)<sup>27</sup> if they meet the standards discussed above in the Phlx rules. The Commission notes that with respect to any future rules adopted by the Exchange pursuant to Rule 19b-4(e),<sup>28</sup> the Exchange has indicated that in its Section 19(b)(2) filings to adopt such new rules, it will state and discuss whether or not it proposes to apply the new rule standards to index-linked exchangeable notes.<sup>29</sup>

#### *G. Accelerated Approval*

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of the publication of notice of filing thereof in the **Federal Register**. The proposal establishes listing and trading standards for a new product, index-linked exchangeable notes. Granting accelerated approval will allow the Exchange to immediately begin listing and trading series of index-linked exchangeable notes under these new standards. While the structure of the product is different from those previously reviewed by the

Commission, the Phlx proposes to apply existing criteria used for other index related products. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,<sup>30</sup> to approve the proposal on an accelerated basis.

#### **V. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>31</sup> that the proposed rule change and Amendments No. 1 and 2 (SR-Phlx-2001-92) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>32</sup>

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

[FR Doc. 01-29399 Filed 11-26-01; 8:45 am]

**BILLING CODE 8010-01-M**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-45083; File No. SR-Phlx-2001-93]**

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to the Listing Agreement for Index-Linked Exchangeable Notes**

November 19, 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 an October 22, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. Amendment No. 1 was filed on November 2, 2001.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>30</sup> 15 U.S.C. 78f(b)(5) and 78s(b).

<sup>31</sup> 15 U.S.C. 78s(b)(2).

<sup>32</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> See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 1, 2001 ("Amendment No. 1"). In Amendment No. 1, the Phlx requested that the Commission waive the 30-day period under which the proposal would become operative under Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>26</sup> See Phlx Rule 1009A(b)(12).

<sup>27</sup> 17 CFR 240.19b-4(e).

<sup>28</sup> *Id.*

<sup>29</sup> See Amendment No. 2, *supra* note 4.

<sup>25</sup> 15 U.S.C. 78f(6)(5).

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

Pursuant to Rule 19b-4 under the Act, the Phlx proposes to adopt a modified listing agreement for a new product to be known as index-linked exchangeable notes.<sup>4</sup>

The text of the proposed rule change appears below. New text is in italics.

### Listing Agreement

*Nothing in the following agreement shall be so construed as to require the issuer to do any act in contravention of law or in violation of any rule or regulation of any public authority exercising jurisdiction of the Issuer.*

\_\_\_\_\_; (hereinafter called the "Corporation"), in consideration of the listing of its securities covered by this application, hereby agrees with the Philadelphia Stock Exchange (hereinafter called the "Exchange"), as follows:

#### I. The Corporation Will

1. promptly notify the Exchange as soon as it becomes aware that it does not meet the maintenance listing standards.

2. promptly notify the Exchange of any change in the general character or nature of its business.

3. promptly notify the Exchange of any changes of officers or directors.

4. promptly notify the Exchange in the event that it or any company controlled by it shall dispose of any property or of any equity interest in any of its subsidiary companies.

5. promptly notify the Exchange of any change in, or removal of, collateral deposited under any mortgage or trust indenture, under which listed securities of the Corporation have been issued.

6. file two copies of all material mailed by the Corporation to its stockholders with respect to any amendment to its Certificate of Incorporation.

7. file with the Exchange two copies of any amendment to the Certificate of Incorporation (one of which will be certified) as soon as the amendment has the approval of the appropriate state agencies.

8. file with the Exchange two copies of any amendments to the By-Laws of

the Corporation (one of which will be certified) as soon as the amendment has the approval of the appropriate state agencies.

9. disclose in its annual report for the Corporation's fiscal year:

a. the number of unoptioned shares available at the beginning and at the close of the year for the granting of options under an option plan;

b. any changes in the exercise price of outstanding options, through cancellation and reissuance or otherwise, except price changes resulting from the normal operation of anti-dilution provisions of the options; and

c. any changes, cancellations or exercises of any options or warrants.

10. *notify the Exchange within ten business days following the end of the month in which the change occurred if the Corporation reacquires or disposes of, directly or indirectly, any of its previously listed stock.*

11. receive the approval of the Exchange before it purchases, directly or indirectly, any of its securities listed on the Exchange at a price in excess of its market value.

12. not redeem any of its listed securities in a manner other than pro rata without prior approval of the Exchange. The Corporation will notify the Exchange at least fifteen days in advance of any such redemption and will provide any information requested in reference to such redemption to the Exchange in a prompt manner.

13. promptly notify the Exchange of any corporate action which will result in the redemption, cancellation or retirement, in whole or in part, of any security of the Corporation listed on the Exchange as soon as the Corporation's management initiates such action.

14. give the Exchange at least ten business days notice in advance of the closing of the transfer books, or of the taking of a record of its stockholders for any purpose.

15. not make any change in the form or nature of any of its securities that are listed on the Exchange or in the rights or privileges of its holders, without having given twenty business days prior notice to the Exchange of the proposed change and having applied for the listing of the changed securities if required by the Exchange.

16. furnish to the Exchange on demand any information concerning the Corporation as the Exchange may reasonably require.

17. promptly notify the Exchange of any depletion in the supply of stock available for trading caused by the deposit of stock under any voting trust,

tender offer or any other deposit agreement.

18. apply to the Exchange for the listing of additional amounts of listed securities at least fifteen business days prior to their issuance in order to afford the Exchange adequate time to properly evaluate the application.

#### II. The Corporation Will

1. publish and mail to the holders of listed securities (and file copies with the Exchange), at least ten business days before the annual meeting and not later than four months after the close of the fiscal year, an annual report containing audited financial statements prepared in conformity with the requirements of the Securities and Exchange Commission.

2. establish and maintain an Audit Committee, which will consist of at least two independent directors. Such directors will not act as officers of the Corporation nor will they own more than ten percent of common shares outstanding.

3. promptly notify the Exchange of any change of their designated independent auditors which regulatory audit the books and accounts of the Corporation.

4. publish quarterly statements of earnings on the basis of the same degree of consolidation as in the Annual Report. Such statements will show net profits before and after Federal taxes and disclose any substantial items of unusual or nonrecurrent nature.

#### III. The Corporation Will

1. maintain in accordance with the requirements of the Exchange:

a. an office or agency where the principal of and interest on all bonds of the Corporation listed on the Exchange shall be payable and where any such bonds which are registerable as to principal of interest may be registered;

b. an office or agency where:

1. all stock of the Corporation listed on the Exchange shall be transferable;
2. checks for dividends and other payments with respect to stock listed on the Exchange may be presented for immediate payment;

3. scrip issued to holders of a security listed on the Exchange and representing a fractional interest in a security listed on the Exchange will, during the period provided for consolidation thereof, be accepted for such purpose; and

4. a security listed on the Exchange which is convertible will be accepted for conversion.

c. *a registrar where stock of the Corporation listed on the Exchange shall be registerable. Such registrar shall be a bank or trust company not acting as transfer agent for the same security.*

<sup>4</sup> On October 4, 2001, the Exchange filed with the Commission SR-Phlx-2001-92, a proposed rule change requesting accelerated approval of new listing standards for index-linked exchangeable notes. This filing was approved November 19, 2001. The Exchange states that the listing standards in SR-Phlx-2001-92 are substantially identical to the listing standard adopted by the American Stock Exchange LLC for index-linked exchangeable notes. See Securities Exchange Act Release No. 44621 (July 30, 2001), 66 FR 41064 (August 6, 2001).

If the transfer books for a security of the Corporation listed on the Exchange should be closed permanently, the Corporation will continue to split up certificates for such security into certificates of smaller denominations in the same name so long as that security continues to be dealt in on the Exchange.

2. not add to the number of its transfer agencies nor make any change of a transfer agency, trustee or fiscal agent of any of the Corporation's listed securities without prior notice to the Exchange.

3. not add to the number of registrants of its listed stock, nor change a registrar of that stock, without the prior approval of the Exchange.

4. not select an officer or director of the Corporation as a trustee of a mortgage or other listed security.

5. have on hand at all times a sufficient supply of certificates to meet the demands for transfer.

6. promptly notify its security holders of any corporate action taken in connection to dividends or purchase rights listed on the Exchange. The Corporation will also contact the Exchange as to such developments.

7. solicit proxies for all meetings of stockholders.

8. pay when due any applicable Listing Fees established from time to time by the Exchange.

9. promptly notify the Exchange whenever any other exchange or market place takes steps to remove their issues from trading.

10. comply with Exchange rules, policies and procedures as in effect and as they may be amended from time to time.

The above agreement has been signed by me as

of \_\_\_\_\_  
(Title) (Name of Company) pursuant to authority granted me by resolution of the Board of Directors of \_\_\_\_\_  
(Corporate Seal) said corporation adopted on  
Dated: \_\_\_\_\_ By: \_\_\_\_\_

(2) Listing agreement for issuers of index-listed exchangeable notes

#### Listing Agreement

Nothing in the following agreement shall be so construed as to require (hereinafter called the "Corporation") to do any act in contravention of law or in violation of any rule or regulation of any public authority exercising jurisdiction over the Corporation.

The Corporation, in consideration of the listing of its (its "Issue"), hereby agrees with the Philadelphia Stock Exchange (hereinafter called the "Exchange"), as follows:

#### I. The Corporation Will

1. promptly notify the Exchange as soon as it becomes aware that it does not meet the maintenance listing standards;

2. promptly notify the Exchange of any material change in the general character or nature of its business;

3. promptly notify the Exchange of any changes of executive officers of the Corporation (as defined by Rule 3b-7 under the Securities Exchange Act of 1934) or directors;

4. promptly notify the Exchange in the event that it or any company controlled by it makes a material disposition of any property or of any equity interest in any of its subsidiary companies;

5. promptly notify the Exchange of any change in, or removal of, collateral deposited under any mortgage or trust indenture, under which the Issue of the Corporation have been issued;

6. file two copies of all proxy statements mailed by the Corporation to its stockholders with respect to any amendment to its Certificate of Incorporation;

7. file with the Exchange two copies of any amendment to the Certificate of Incorporation (one of which will be certified) as soon as the amendment has the approval of the appropriate state agencies;

8. file with the Exchange two copies of any amendments to the By-Laws of the Corporation (one of which will be certified) as soon as the amendment has the approval of the appropriate state agencies;

9. disclose in its annual report for the Corporation's fiscal year:

a. the number of unoptioned shares available at the beginning and at the close of the year for the granting of employee stock options under an employee stock option plan and  
b. changes, cancellations or exercises of any employee stock options;

10. inform the Exchange within ten business days following the end of each month of the total amount of the Issue outstanding at the end of such month;

11. receive the approval of the Exchange before it purchases, directly or indirectly, any of the Issue listed on the Exchange at a price in excess of its market value;

12. not redeem any of the Issue in a manner other than pro rata without prior approval of the Exchange (the Corporation will notify the Exchange at least fifteen days in advance of any such redemption and will provide any information requested in reference to such redemption to the Exchange in a prompt manner);

13. promptly notify the Exchange of any corporate action which will result in

the redemption, cancellation or retirement, in whole or in part, of the Issue as soon as the Corporation's management initiates such action;

14. not make any change in the form or nature of any of the Issue listed on the Exchange or in the rights or privileges of holders of the Issue, without having given twenty business days prior notice to the Exchange of the proposed change and having applied for the listing of such changed securities if required by the Exchange;

15. promptly furnish to the Exchange any other publicly available information concerning the Corporation as the Exchange may reasonably require;

16. promptly notify the Exchange of any depletion in the supply of the listed Issued available for trading caused by the deposit of the listed Issue under any voting trust, tender offer or any other deposit agreement; and

17. apply to the Exchange for the listing of additional amounts of the Issue as soon as reasonably practicable and at latest on the business day prior to listing.

#### II. The Corporation Will

1. publish and file with [the entity or entities required to receive an annual report containing audited financial statements under the law or rules of the Commission], (and file copies with the Exchange) an annual report containing audited financial statements prepared in conformity with the requirements of the Securities and Exchange Commission (the "Commission") within fifteen days after the Corporation is required to file such annual report with the Commission;

2. establish and maintain an Audit Committee which will consist of at least two independent directors (such directors will not act as officers of the Corporation nor will they own more than ten percent of common shares outstanding);

3. promptly notify the Exchange of any change of their designated independent auditors which regularly audit the books and accounts of the Corporation and

4. publish quarterly statements of earnings on the basis of the same degree of consolidation as in the Annual Report (such statements will show net profits before and after Federal taxes and disclose any substantial items of unusual or nonrecurrent nature).

#### III. The Corporation Will

1. maintain in accordance with the requirements of the Exchange:

a. an office or agency where the principal of, and interest on, all bonds of the Corporation listed on the

*Exchange shall be payable and where any such bonds which are registerable as to principal of interest may be registered;*

*b. an office or agency where a security listed on the Exchange which is convertible will be accepted for conversion;*

*2. not add to the number of its transfer agencies nor make any change of a transfer agency, trustee or fiscal agent of the Issue without prior notice to the Exchange;*

*3. not select an officer or director of the Corporation as a trustee of a mortgage or in connection with the issuance of the Issue listed with the Exchange;*

*4. have on hand at all times a sufficient supply of certificates to meet the demands for transfer;*

*5. pay when due any applicable Listing Fees established from time to time by the Exchange;*

*6. promptly inform the Exchange if the Corporation's common stock or Issue is delisted by the New York Stock Exchange, American Stock Exchange or Pacific Exchange and*

*7. comply with Exchange rules, policies and procedures as in effect and as they may be amended from time to time.*

*The above agreement has been signed by me as \_\_\_\_\_ pursuant to authority granted me by resolution of the Board of Directors of said corporation adopted on [DATE].*

*(Corporate Seal)*

*Dated: \_\_\_\_\_; By: \_\_\_\_\_*

## **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 Exchange 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 Exchange 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 purpose of this proposed rule change is to modify its present listing agreement to accommodate issuers of a new product to be known as index-linked exchangeable notes. Under Phlx

Rule 803(f), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants. The Phlx, in proposed rule change SR-Phlx-2001-92,<sup>5</sup> proposed new Phlx Rule 803(m), creating listing standards for index-linked exchangeable notes that are intended to allow investors to hold a single, exchange-listed note exchangeable for the cash value of the underlying stocks of an index, and thereby to acquire—in a single security and a single trade—exposure to a specific index of equity securities.

The Exchange intends to list at least one index-linked exchangeable note under these new proposed standards. In reviewing its listing materials, the Exchange decided to propose a modified listing agreement for issuers of index-linked exchangeable notes. The Exchange requires listing agreements with issuers to better ensure receipt of information from the issuer about the issue and the issuer itself.

The proposed listing agreement is substantially similar to the current listing agreement with the following modifications. In Section I, the proposed agreement does not contain a reference to the closing of transfer books or the taking of a record of stockholders because index-linked exchangeable notes are debt instruments and consequently holders of the notes do not participate in issuer corporate governance.

In Section II, the proposed agreement contains a provision that an annual report containing audited financial statements to be sent to those required to receive them under the law or rules of the Commission. Finally, in Section III, the proposed agreement does not include references to dividends and proxies for stockholder meetings, since these items are not applicable to these debt instruments.

The Exchange notes that its proposed listing agreement retains the provision against construing the agreement in such a way as requiring the issuer to act in violation of law or regulation. Also, the proposed listing agreement retains the provision, in Section III, item 7, requiring the issuer to comply with Exchange rules, policies and procedures as in effect and as they may be amended from time to time.

The Exchange believes that these modifications to its current listing agreement reflect the nature of the index-linked exchangeable note and issuer of such notes and do not require

such issuers to provide or Exchange staff to receive non-applicable information. Nevertheless, the Exchange believes that the modifications retain the elements of the current agreement that apply universally to any Exchange issuer.

#### **(2) Statutory Basis**

The exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of section 6(b)(5),<sup>7</sup> in particular, in that that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

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

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4<sup>9</sup> thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See *supra* footnote number 4.

in furtherance of the purposes of the Act.<sup>10</sup>

The Commission notes that under Rule 19b-4(f)(6)(iii), the proposal does not become operative for 30 days after the 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 has requested that the Commission waive the 30-day operative date.<sup>11</sup> Accelerating the operative date to October 22, 2001, will enable the Exchange to modify its listing agreement in order to begin to list its new product, index-linked exchangeable notes. For this reason, the Commission finds good cause to designate that the proposal become operative on October 22, 2001.<sup>12</sup>

#### 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 that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. 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-2001-93 and should be submitted by December 18, 2001.

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

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

[FR Doc. 01-29400 Filed 11-26-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45079; File No. SR-Phlx-2001-102]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend a PACE Order Execution and Price Protection Pilot Program

November 19, 2001.

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 November 5, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed this proposal under Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission. 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 Exchange proposes to extend through January 14, 2002, its Philadelphia Stock Exchange Automated Communication and Execution System ("PACE")<sup>5</sup> order execution and price protection pilot program ("pilot program"). The pilot program, which is found in Supplementary Material .05 and .07(c)(ii) to Phlx Rule 229, incorporates decimal pricing into two PACE provisions—immediate execution of certain market orders through the Public Order Exposure System ("POES") and mandatory double-up/double-down price protection for equities quoting in decimals. The pilot program has been in effect since August 25, 2000.<sup>6</sup>

The only substantive change the Phlx proposes at this time is to extend the pilot program through January 14, 2002.

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6). The Phlx requested that the Commission waive the 5-day pre-filing notice requirement, and the 30-day operative delay.

<sup>5</sup> PACE is the Exchange's automated order delivery, routing, execution and reporting system for equities.

<sup>6</sup> The pilot program was established in SR-Phlx-00-08. See Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000).

The text of the proposed rule change is available at the Phlx and at the Commission.

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

In its filing with the Commission, the Exchange 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 Exchange 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 extend, through January 14, 2002, the Exchanges' Rule 229 pilot program that incorporates immediate execution of certain orders and mandatory double-up/double-down price protection for equities quoting in decimals over PACE. No other substantive changes to the pilot program are proposed at this time.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act<sup>7</sup> in general, and in particular, with Section 6(b)(5),<sup>8</sup> in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by providing for automatic execution of certain market orders and mandatory double-up/double-down price protection for equities traded in decimals.

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

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

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

No written comments were either solicited or received.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on November 2, 2001, the date the Phlx filed Amendment No. 1.

<sup>11</sup> See *supra* footnote 3.

<sup>12</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).

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