

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 purpose of the proposed rule change is to conform Phlx Rule 2001(b)(2)(viii) to ITS Plan Amendment No. 17.⁶

Presently, Phlx Rule 2001 provides that a commitment to trade shall, at a minimum, specify the length of the period in which that commitment is irrevocable, and if such information is not specified, the lesser of the two options available would apply. The two time-periods available currently are one and two minutes.

Among other things, ITS Plan Amendment No. 17 provides for the addition of a third option—a 30-second commitment period.⁷ The 30-second option would be available, once installed by the Securities Industry Automation Corporation ("SIAC") and implemented by the Exchange, on a six-month pilot basis.⁸

Accordingly, the Exchange proposes to amend Phlx Rule 2001, which provides for trading through ITS, by replacing the current language in subsection (b)(2)(viii), which states that there are "two" irrevocable time-period options, with the word "three," thereby mirroring ITS Plan Amendment No. 17.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁹ in general, and furthers the objectives of section 6(b)(5),¹⁰ in particular, because it should promote just and equitable principles of

trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, 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

Because the foregoing proposed rule change: (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 after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx seeks to have the proposed rule change become operative immediately.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative as of October 30, 2001.¹³

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 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).

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 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 Phlx. All submissions should refer to File No. SR-Phlx-2001-99 and should be submitted by December 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45086; File No. SR-Phlx-2001-96]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's Options Maintenance Standards

November 19, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

¹⁴ 17 CFR 200.30-3(a)(12).

⁶ See *supra* note 5.

⁷ See ITS Plan Amendment No. 17, *supra* note 5.

⁸ The Exchange will implement the six-month pilot on November 30, 2001. See telephone conversation between Edith Hallahan, Deputy General Counsel, Phlx, and Jennifer Lewis, Attorney, Division of Market Regulation, Commission, on November 16, 2001.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on October 18, 2001, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On November 19, 2001, the Phlx submitted Amendment No. 1 to the proposed rule change.³ 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 Phlx proposes to amend Phlx Rule 1010, which governs the delisting of options classes on underlying equity securities ("Delisting Criteria Rule" or "Phlx Rule 1010").

The text of the proposed rule change, as amended, is available at the Phlx and 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 Phlx included statements concerning the purpose of and basis for the proposed rule change, as amended, 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 purpose of the proposed rule change, as amended, is to amend the Delisting Criteria Rule. The Exchange's Delisting Criteria Rule currently provides that the Exchange may not list additional series on an option class if the underlying security has not closed above \$5 for the majority of business days during the preceding six calendar months as measured by the highest closing price reported in any market in which the underlying security traded ("5\$ guideline").⁴ The Delisting Criteria Rule provides limited exceptions to the 5\$ guideline such that series may be added even when the underlying security did not satisfy the 5\$ guideline if the underlying security met either a separate 3\$ guideline or a separate 4\$ guideline.

Change in Guideline Price. The Exchange is proposing to amend its Delisting Criteria Rule in a few respects. First, the Exchange is amending the Delisting Criteria Rule by changing the guideline price (set for in Commentary .01 to Phlx Rule 1010) used to determine whether an underlying security previously approved for Exchange options transactions no longer meets the requirements for the continuance of approval. The Exchange proposes to reduce the guideline price used to make this determination from \$5 to \$3 in the primary market.⁵ In addition, the Exchange proposes to eliminate the requirement for the Exchange to determine the guideline price by looking at whether the security closed above that price for a majority of the business days during the preceding six calendar months. Instead, the Exchange proposes to determine whether the underlying security closed above that price in the primary market in which it is traded (*i.e.*, no proposed to be 3\$) on the previous trading day. The Exchange is not otherwise proposing to amend the other criteria used to determine whether a class of options meets the requirements for the continuance of approval (such as, the number of shares that must be held by

non-insiders, number of holders, and trading volume).

Intra-Day Additions of Series. The Exchange proposes to amend Commentary .02 to Phlx Rule 1010 by reducing from \$5 to \$3 the price above which the underlying security must be traded in the primary market before the Exchange may add additional series of options intra-day. This means if the Exchange is adding a series intra-day, the underlying security must have closed above \$3 the previous day in the primary market (in order to meet the requirement of Commentary .01(4) to Phlx Rule 1010) and must be at \$3 or above the primary market at the time the new series is added (in order to meet the requirement of Commentary .02 to Phlx Rule 1010).

Elimination of Commentary .05 to Phlx Rule 1010. The Exchange also is proposing to eliminate Commentary .05 of the Delisting Criteria Rule. Commentary .05 to Phlx Rule 1010 sets forth guidelines for adding classes notwithstanding that the price of the underlying security does not meet the 5\$ guideline currently set forth in Commentary .01, to Phlx Rule 1010. Notwithstanding the 5\$ guideline, Commentary .01 to Phlx Rule 1010 currently provides that the Exchange may add series if: (1) the closing price of the underlying security was over \$3 for a majority of the days during the six calendar month period preceding the addition, and (2) the closing price of the underlying security must be \$4 for a majority of the days during a subsequent six calendar month period. Because the Exchange is proposing to change the initial guideline from \$5 to \$3, Commentary .05 to Phlx Rule 1010 is no longer needed.

Reasons for Change to Delisting Criteria. The Phlx represents that when many of the delisting criteria were first implemented, the listed options market was in its infancy. Now more than twenty-five years after the Phlx first started trading listed options, the Phlx asserts that the listed options market is a mature market with sophisticated investors. The Exchange does not believe that the 5\$ guideline is necessary to accomplish its presumed intended purpose; *i.e.*, to prevent the proliferation of option classes on underlying securities that lack liquidity needed to maintain fair and orderly markets.⁶ The Exchange believes that it should allow the desires of the Exchange's customers and the workings of the marketplace to determine the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from John Dayton, Assistant Secretary & Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 16, 2001 ("Amendment No. 1"). In Amendment No. 1, the Phlx clarified in Commentary .01, subparagraph 4, and Commentary .02 to Phlx Rule 1010 that it will look to the primary market in which the underlying security trades in determining whether the underlying security satisfies the price requirements for adding additional series of options contracts. The Phlx also requested approval for the instant proposed rule change to be reclassified as filed under section 19(b)(3)(A), 15 U.S.C. 78s(b)(3)(A), and Rule 19b-4(f)(6) thereunder, 17 CFR 240.19b-4(f)(6). Lastly, the Phlx requested the original proposal on October 18, 2001, be considered the pre-filing notice required pursuant to Rule 19b-4(f)(6), 17 CFR 240.19b-4(f)(6).

⁴ Other factors also must be met for the Exchange to add additional series in a class as described in Commentary .01 to Phlx Rule 1010.

⁵ If the underlying security does not meet the guideline price, the Exchange will not open additional series of options of that class and may take other actions, such as prohibiting opening purchase transactions in series of options of that class previously opened.

⁶ See Securities Exchange Act Release No. 33257 (November 30, 1993), 58 FR 64416 (December 7, 1993).

securities on which the Exchange will list options.⁷ The Exchange believes its own business considerations should ensure that the Exchange does not list inappropriate classes of options. In determining to list any number of new option series under the proposed less restrictive standard, the Exchange represents that it must ensure that its own systems and those of Options Price Reporting Authority can handle any increased capacity requirements.

The Exchange represents that another reason for the proposal is that the current rule can be subject to differing interpretations. The Exchange notes that the options exchanges believe differing interpretations have occurred. The Exchange believes that the proposal is more clear because it reduces the standards to only one price guideline and checks that guideline the previous day or intra-day, instead of over the previous six months.

2. Statutory Basis

The Exchange believes that the current proposal should allow the Exchange to provide investors with those options that are most useful and demanded by them without sacrificing investor protection. As such, the Exchange believes the proposed rule change, as amended, is consistent with section 6 of the Act,⁸ in general, and with section 6(b)(5) of the Act,⁹ in particular, because it should promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and 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, as amended, 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 solicited or received.

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

Because the foregoing proposed rule change, as amended: (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 after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with the brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change,¹⁰ or such shorter time as designated by the Commission, the proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx seeks to have the proposed rule change, as amended, become operative immediately. The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, operative as of November 20, 2001.¹³ The Commission notes that the proposed rule change, as amended, is substantially similar in all material respects to the rule of another exchange that the Commission has already noticed for public comment and approved¹⁴ and, therefore, the proposed rule change raises no new issues of regulatory concern.

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.¹⁵

¹⁰ See *supra* note 3.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 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).

¹⁴ See Securities Exchange Act Release No. 44964 (October 19, 2001), 66 FR 54559 (October 29, 2001) (order approving File No. SR-CBOE-2001-29).

¹⁵ See section 19(b)(3)(C) of the Act, 15 U.S.C. 78(b)(3)(C).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2001-96 and should be submitted by December 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45090; file No. SR-Phlx-2001-100]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. To Extend Its Pilot Program To Disengage Its Automatic Execution System ("AUTO-X") for a Period of Thirty Seconds After the Number of Contracts Automatically Executed in a Given Option Meets the AUTO-X Minimum Guarantee for That Option

November 21, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on October 30, 2001, the Philadelphia Stock

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁷ Of course, the rule still provides that the security underlying the option must be listed on a national securities exchange or Nasdaq.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).