

A. by order approve such 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, 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-2001-43 and should be submitted by January 2, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45132; File No. SR-Phlx-2001-107]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Extension of the Interim Intermarket Linkage Program

December 5, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act of 1934"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 29, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission")

the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Phlx, pursuant to Rule 19b-4 under the Act, proposes to extend the pilot program authorizing implementation of "interim linkages" with the other options exchanges.³

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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in section 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 request an extension of an intermarket options linkage on an "interim" basis. Currently, the Exchange is operating this interim linkage as a pilot program pursuant to Phlx Rule 1081. The interim linkage utilizes existing market infrastructure to facilitate the sending and receiving of order flow between Phlx Specialists, and may later include Registered Options Traders, and their counterparts on the other options exchanges as an interim step towards development of a "permanent" linkage. The Exchange now proposes that the interim linkage would remain in effect on a pilot basis until April 1, 2002.

By way of background, the Commission has approved a linkage plan that now includes all five options exchanges.⁴ The options exchanges

continue to work towards implementation of this linkage, including contracting with a third party to build a linkage infrastructure. In the meantime, the options exchanges have implemented this interim linkage.

The key component of the interim linkage is the participating exchanges opening their automated customer execution systems, on a limited basis, to market maker orders. Specifically, market makers, such as Phlx Specialists, and later Registered Options Traders, are able to designate certain orders as "customer" orders, and thus, receive execution under the automatic execution parameters of participating exchanges pursuant to the interim linkage.⁵

The interim linkage authorizes the Phlx to implement bilateral or multilateral interim arrangements with the other exchanges to provide for equal access between market makers on our respective exchanges. Currently the interim linkage pilot program allows Phlx Specialists and their equivalents on the other exchanges, when they are holding customer orders, to send orders reflecting the customer orders to the other market for execution when the other market has a better quote. Such orders are limited in size to the lesser of the size of the two markets' "firm" quotes for customer orders. The Exchange expects that the interim linkage may expand to include limited access for pure principal orders of no more than 10 contracts.

Under the rules of the pilot program, all interim linkage orders must be "immediate or cancel" (that is, they cannot be placed on an exchange's limit order book), and a market maker can send a linkage order only when the other (receiving) market is displaying the best national bid or offer and the sending market is displaying an inferior price. This allows a Phlx Specialist to access the better price for its customer. In addition, if the interim linkage includes principal orders, it would allow market makers to attempt to "clear" another market displaying a superior quote.⁶

Phlx Specialists' participation in the interim linkage is voluntary. Only when a Phlx Specialist and their equivalent on another exchange believe that this form

³ On May 16, 2001, the Commission issued a notice of filing and immediate effectiveness of a pilot program submitted by the Phlx authorizing the implementation of an interim linkage. See Securities Exchange Act Release No. 44311, 66 FR 28768 (May 24, 2001).

⁴ See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000).

⁵ As with other orders that are executed under the automatic execution parameters of the Exchange, when a limit order constitutes the Exchange's best bid or offer, the specialist executes the incoming order against that order.

⁶ The Commission continues to expect that any exchange participating in the interim linkage will implement heightened surveillance procedures to help ensure that their respective market makers send only properly-qualified orders through the interim linkage.

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240-19b-4.

of mutual access is advantageous will the exchanges employ the interim linkage procedures. The Exchange believes that the interim linkage benefits investors and provides useful experience to help the exchanges in implementing the full linkage. For these reasons, the Exchange requests an extension of the pilot program until April 1, 2002.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6(b)(5) under the Act⁷ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 for 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 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 received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the commission will:

(A) by order approve such 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, 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-2001-107 and should be submitted by January 2, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45129; File No. SR-Phlx-99-41]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change and Amendment Nos. 1, 2, and 3 thereto by the Philadelphia Stock Exchange, Inc. Relating to the Trading of Trust Shares

DATES: December 4, 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 November 9, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposal relating to the trading of Trust Shares. On July 10, 2000, the Exchange filed Amendment No. 1 to the proposal.³ On

October 1, 2001, the Exchange filed Amendment No. 2 to the proposal.⁴ On November 28, 2001, the Exchange filed Amendment No. 3 to the proposal.⁵ The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant partial accelerated approval to the proposal.⁶

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

The Phlx proposes to adopt additional rules and rule amendments that, if approved, would accommodate the trading of Trust Shares. Specifically, the Exchange is proposing to amend Rule 126 to provide for the crossing of block orders; Rule 119 to provide for enhanced specialist participation in Trust Shares; Rule 229 to provide for at-the-opening orders and to provide display of bids and offers in Trust Shares; Rule 703 to establish a minimum net capital requirement for specialists in Trust Shares; and Rule 203 to give precedence to at-the-opening orders and other market orders at opening.⁷ Amendment No. 2 replaces the original filing and Amendment No. 1 in their entirety. A list of proposed provisions that the Exchange proposes to establish or amend, is set forth below, with the name of the pertinent rule noted. This is followed by proposed rule text. Proposed new language is in italics; proposed deletions are in brackets.

(December 13, 2000), 65 FR 80976 (December 22, 2000).

⁴ See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated September 28, 2001 ("Amendment No. 2"). Amendment No. 2 replaced Amendment No. 1 in its entirety. Amendment No. 2, among other things, omits provisions in the original proposal relating to the establishment of Registered Equity Market Makers to trade Trust Shares.

⁵ See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated November 28, 2001 ("Amendment No. 3"). Amendment No. 3 made certain technical changes to the amended rule proposal.

⁶ The Exchange requested accelerated approval of all portions of the proposal except those that deal with guaranteed specialist participation.

⁷ Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Steven Johnston, Special Counsel, Division, Commission on October 2, 2001 (clarifying that proposed changes to Rules 229 would apply to certain other securities as well as Trust Shares.)

⁷ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Nandita Yagnik, Attorney, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 7, 2000 ("Amendment No. 1"). Amendment No. 1 replaced the original proposal in its entirety. The original proposal contained provisions related to the listing of Trust Shares. These provisions do not appear in Amendment No. 1, but were filed in a separate rule proposal, File No. SR-Phlx-00-54. See Securities Exchange Act Release No. 43717