

requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC-2003-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48472; File No. SR-PHLX-2002-86]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendments No. 1, 2, and 3 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 4 and 5 Thereto Relating to the Automatic Execution of Booked Customer Limit Orders

September 10, 2003.

On December 20, 2002, the Philadelphia Stock Exchange ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), 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> a proposed rule change relating to automatic execution of booked customer limited orders. On February 27, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On March 28, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> On April 9, 2003, the Exchange filed Amendment No. 3 to the proposed rule change.<sup>5</sup> The

proposed rule change, as modified by Amendments No. 1, 2, and 3, was published in the **Federal Register** on April 16, 2003.<sup>6</sup> The Commission received one comment letter with respect to the proposal.<sup>7</sup> The Exchange submitted a letter in response to ISE Letter on May 20, 2003.<sup>8</sup> On July 9, 2003 and August 15, 2003, the Exchange submitted Amendments No. 4<sup>9</sup> and 5<sup>10</sup> to the proposed rule change, respectively. This order approves the proposed rule change and Amendments No. 1, 2, and 3, accelerates approval of Amendments No. 4 and 5, and solicits comments from interested persons on Amendments No. 4 and 5.

### I. Description of the Proposed Rule Change

The PHLX proposes to amend PHLX Rule 1080, Philadelphia Stock Exchange Automated Options Market ("AUTOM") and Automatic Execution System ("AUTO-X"),<sup>11</sup> to provide for the automatic execution of eligible inbound customer and off-floor broker-dealer

Assistant Director, Division, Commission, dated April 9, 2003 ("Amendment No. 3"). In Amendment No. 3, the PHLX incorporates changes to the text of the PHLX Rule 1080 that have been made in separate proposed rule change filings since the time the current proposed rule change was submitted.

<sup>6</sup> See Securities Exchange Act Release No. 47657 (April 10, 2003), 68 FR 18717.

<sup>7</sup> See Letter from Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc. ("ISE") to Jonathan G. Katz, Secretary, Commission, dated May 7, 2003 ("ISE Letter").

<sup>8</sup> See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Jonathan G. Katz, Secretary, Commission, dated May 20, 2003 ("PHLX Letter").

<sup>9</sup> See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated July 8, 2003 ("Amendment No. 4"). In Amendment No. 4, the Exchange propose to adopt new rule texts to clarify the scope of the application of the exposure requirement, and provides clarifying language to the proposal relating to the definition of the term "off-floor broker-dealers" and the internalization of orders delivered to the Exchange.

<sup>10</sup> See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated August 15, 2003 ("Amendment No. 5"). In Amendment No. 5, the Exchange proposes deleting the 10-second timer provision and implementing Book Match, on an issue-by-issue basis, no later than October 1, 2003.

<sup>11</sup> AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. See PHLX Rule 1080.

limit orders<sup>12</sup> against booked customer limit orders at the Exchange's disseminated price. Specifically, the Exchange is proposing to amend PHLX Rule 1080(g) to reflect that the contra-side of an eligible inbound customer or off-floor broker-dealer limit order executed via AUTO-X may be a booked customer limit order.

The purpose of the proposal is to increase automated options order handling by enabling the Exchange to automatically execute eligible inbound customer and off-floor broker-dealer limit orders delivered via AUTOM against customer limit orders on the specialist's limit order book.<sup>13</sup> The proposal represents the first phase ("Phase I") of the Exchange's "Book Match" system, which the Exchange anticipates will eventually automatically match all eligible inbound order types against orders resting on the limit order book ("booked limit orders").<sup>14</sup>

Currently, the Exchange's AUTOM System and its automatic execution feature, AUTO-X, do not automatically execute otherwise eligible inbound orders if all or part of the Exchange's disseminated size at the disseminated

<sup>12</sup> In April of 2002, the Commission approved, on a six-month pilot basis, the Exchange's proposal to allow off-floor broker-dealers to submit proprietary limit orders directly onto the limit order book via AUTOM (the "pilot"). See Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR-PHLX-2001-40). In the pilot, the Exchange defined "off-floor broker-dealer" as (a) a broker-dealer that delivers orders from "upstairs" for the proprietary account(s) of such broker-dealer, or (b) a market maker located on an exchange or trading floor other than the Exchange's trading floor who elects to deliver orders via AUTOM for the proprietary account(s) of such broker-dealer. The Commission approved the pilot on a permanent basis in October 2002. See Securities Exchange Act Release No. 46660 (October 15, 2002), 67 FR 64951 (October 22, 2002) (SR-PHLX-2002-50).

<sup>13</sup> The electronic "limit order book" is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. See PHLX Rule 1080, Commentary .02.

<sup>14</sup> The Exchange notes that it was required by the Commission to commit to the automatic execution of eligible inbound orders against specialist and Registered Options Trader ("ROT") limit orders entered onto the limit order book through an electronic interface system known as "ROT Access" under the *Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions*. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File 3-10282 (the "Order"). See also Securities Exchange Act Release No. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2002) (SR-PHLX-2002-04). The Exchange has committed to roll out the system for the automatic execution of orders placed on the limit order book through ROT Access beginning in January 2004. The instant proposal represents the first phase in the eventual rollout of that system.

<sup>4</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 Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 26, 2003 ("Amendment No. 1"). In Amendment No. 1, the PHLX replaces in its entirety the original proposed rule change.

<sup>4</sup> See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated March 27, 2003 ("Amendment No. 2"). In Amendment No. 2, the PHLX replaces in its entirety Amendment No. 1.

<sup>5</sup> See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn,

price consists of a booked limit order. In that situation, inbound orders that would otherwise be eligible for automatic execution are matched manually by the specialist.<sup>15</sup>

The Exchange proposes, pursuant to proposed PHLX Rule 1080(g)(ii), that when the Exchange's disseminated price is equal to the National Best Bid or Offer ("NBBO"), and all or part of the Exchange's disseminated size at the NBBO disseminated price includes a customer limit order on the book, eligible inbound customer and off-floor broker-dealer limit orders would be automatically executed against booked customer limit orders at the NBBO, up to the size of the booked customer limit orders at the NBBO.<sup>16</sup> If the inbound customer or off-floor broker-dealer limit order is for a greater size than the Exchange's disseminated size, the remaining portion of the order would be executed manually or placed on the limit order book by the specialist.<sup>17</sup> The Exchange proposes to deploy Book Match, on an issue-by-issue basis, no later than October 1, 2003.<sup>18</sup>

#### *a. Order Entry Firm Orders Delivered by Such Order Entry Firm, an Affiliated Firm, or a Solicited Party*

The Exchange believes that the Book Match proposal could create an opportunity for off-floor member organizations to internalize orders (*i.e.*, submit a proprietary order as contra-side to their customers' limit orders on the book) without providing the specialist and trading crowd with a sufficient time period to determine to execute the customer limit order.

To address this potential issue, the Exchange originally proposed requiring member organizations that seek to submit a related proprietary contra-side order (*i.e.*, their own order or that of an affiliate) via AUTOM in conjunction with a customer limit order they deliver to the limit order book, to designate such orders with a special indicator ("K" for the customer limit order, and "L" for the proprietary order). Such

<sup>15</sup> PHLX Rule 1080(c)(iv) sets forth the various situations in which orders otherwise eligible for automatic execution via AUTO-X are handled manually by the specialist, including this situation, where there is a booked limit order. See Securities Exchange Act Release No. 45927 (May 15, 2002), 67 FR 36289 (May 23, 2002) (SR-PHLX-2001-24).

<sup>16</sup> The disseminated price consisting of a booked limit order at which the eligible inbound order would be executed must be the NBBO. For instance, if the PHLX bid is the National Best Bid, but the PHLX offer is not the National Best Offer, an inbound buy order would not be subject to Book Match, but would instead be handled manually.

<sup>17</sup> In Amendment No. 5, the Exchange proposes to delete the 10-second timer initially proposed. See Amendment No. 5, *supra* note 10.

<sup>18</sup> See Amendment No. 5, *supra* note 10.

orders would not be eligible for AUTO-X or Book Match, and the customer limit order labeled "K" must be exposed to the crowd for a period of 30 seconds before it would be eligible to be executed against the proprietary order labeled "L." The proposal would provide that the customer limit order on the book may be executed by the specialist or crowd prior to the expiration of 30 seconds.

In Amendment No. 4, the Exchange amended this aspect of its proposed rule change to broaden the application of the above exposure requirement to solicited party orders. As amended, the Exchange would require that member organizations that seek to submit a customer limit order and a related proprietary contra-side order (*i.e.*, their own order, an affiliate order, or a solicited party order as defined in PHLX Rule 1064(c)(ii)) delivered via AUTOM, to designate such orders with a special indicator ("K" for the customer limit order, and "L" for the proprietary order).<sup>19</sup> Such orders would not be eligible for AUTO-X or Book Match, and the customer limit order labeled "K" must be exposed to the crowd for a period of 30- seconds before it would be eligible to be executed, in whole or in part, against proprietary orders with labeled "L" indicator. The proposal would also provide that the customer limit order on the book may be executed by the specialist or crowd at anytime.

The Exchange also amended the proposed rule change, pursuant to Amendment No. 4, to prohibit an Exchange member or member organization from being a party to any arrangement designed to circumvent the crossing procedures discussed above, by providing an opportunity for a customer, member, member organization, or non-member broker-dealer, to execute immediately against agency orders delivered to the Exchange, whether such orders are delivered via AUTOM or represented in the trading crowd by a member or member organization.<sup>20</sup>

#### *b. Linkage Orders*

The Exchange further believes that the Book Match function will enable the Exchange to promptly execute orders delivered to the Exchange pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the "Plan")<sup>21</sup> and PHLX Rules

<sup>19</sup> See Amendment No. 4, *supra* note 9.

<sup>20</sup> *Id.*

<sup>21</sup> See Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (Notice of PHLX Joining the

1083-1087 adopted to implement the Plan,<sup>22</sup> by matching eligible inbound linkage orders in a timely fashion. The Exchange represents that its systems are capable of recognizing inbound Linkage Principal Acting as Agent Orders ("P/A Orders")<sup>23</sup> and Principal Orders ("P Orders"),<sup>24</sup> and that Book Match would execute eligible linkage orders at the Firm Customer Quote Size<sup>25</sup> in the case of P/A Orders, and at the Firm Principal Quote Size<sup>26</sup> in the case of P Orders.

#### *c. Yielding Requirements*

The Exchange also proposed to match both inbound marketable customer and off-floor broker-dealer limit orders with customer limit orders on the book at the NBBO. In the case of inbound non-marketable limit orders, the Exchange's rules concerning the establishment of a bid or offer, and yielding requirements in parity situations would apply. Currently, PHLX Rule 1080, Commentary .05(ii) provides that off-floor broker-dealer limit orders entered via AUTOM establishing a bid or offer may establish priority, and the specialist and crowd may match such a bid or offer and be at parity, subject to the yield provisions set forth in PHLX Rule 1014, which require "controlled accounts"<sup>27</sup> to yield priority to customer orders when bidding or

Plan); and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Approval of the Plan).

<sup>22</sup> See Securities Exchange Act Release No. 47296 (January 31, 2003), 68 FR 6528 (February 7, 2003) (SR-PHLX-2002-67).

<sup>23</sup> PHLX Rule 1083(j)(i) defines a "P/A Order" as an order for the principal account of a specialist (or equivalent entity on another exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent.

<sup>24</sup> PHLX Rule 1083(j)(ii) defines a "P Order" as an order for the principal account of an eligible market maker and is not a P/A Order.

<sup>25</sup> "Firm Customer Quote Size" with respect to a P/A Order means the lesser of (a) the number of option contracts that the exchange sending a P/A Order guarantees it will automatically execute at its disseminated price in a series of an eligible option class for public customer orders entered directly for execution in that market; or (b) the number of option contracts that the exchange receiving a P/A Order guarantees it will automatically execute at its disseminated price in a series of an eligible option class for public customer orders entered directly for execution in that market. This number shall be at least 10. See PHLX Rule 1083(g).

<sup>26</sup> "Firm Principal Quote Size" means the number of options contracts that an exchange guarantees it will execute at its disseminated price for incoming Principal Orders in an eligible option class. This number shall be at least 10. See PHLX Rule 1083(h).

<sup>27</sup> PHLX Rule 1014(g)(i)(A) provides that an account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a broker-dealer (specialist accounts of PHLX option specialists, however, are not subject to yielding requirements placed upon controlled accounts by this rule). Customer accounts are all other accounts.

offering at the same price for the same series.

Orders of controlled accounts must yield priority to customer orders.<sup>28</sup> Off-floor broker-dealer accounts, a subset of "controlled accounts," must also yield priority to customer orders at the same price. Therefore, if an off-floor broker-dealer limit order is placed on the limit order book, followed by a customer limit order placed on the limit order book at the same price, the off-floor broker-dealer limit order must yield priority to the customer limit order, even though the customer limit order was placed on the limit order book after the off-floor broker-dealer order.<sup>29</sup>

## II. Comment Summary

The Commission received one comment letter on the proposed rule change that generally opposed the Exchange's proposal relating to its crossing procedures pursuant to Rule 1080(ii).<sup>30</sup>

Specifically, ISE stated that the Exchange's proposed term "off-floor broker-dealer," which included two alternative definitions of the same term, appeared to be redundant. The term "off-floor broker-dealer" would involve either: (1) A broker-dealer that delivers orders from off the floor of the Exchange for the proprietary account(s) of such broker-dealers; or (2) a market maker located on an exchange or trading floor other than the Exchange's trading floor who elects to deliver orders via AUTOM for the proprietary account(s) of such market maker. ISE argued that the Exchange does not need the second clause above, since orders of market makers from other exchanges are also proprietary orders of a broker-dealer.

Furthermore, ISE believed that the exposure requirement does not appear sufficiently broad because the Exchange stated that the exposure requirement would apply to customer limit order submitted "in conjunction" with a proprietary contra-side order via AUTOM. ISE stated that if this were the case, then the exposure requirement would be too narrow, as it would allow broker-dealers to enter two orders

separately, but within a few seconds of each other, to avoid the 30-second exposure requirement altogether.

ISE also believed that the Exchange should include an exposure requirement (*i.e.*, 30 seconds) for solicited transactions.

In addition, ISE argued that the Exchange should adopt provisions: (1) To prohibit Exchange members from entering into arrangements with other broker-dealers to do crossing transactions without applying the same exposure requirement; and (2) to prohibit Exchange members from violating the exposure requirement for solicited orders.

On July 8, 2003, the Exchange submitted Amendment No. 4 in response to ISE's comments. In particular, the Exchange amended the proposed rule text relating to the term "off-floor broker-dealer," to clarify that off-broker-dealer orders include orders of market makers from other exchanges.<sup>31</sup> The Exchange also amended the proposed rule text to clarify that the exposure requirement would also apply to solicited transactions.<sup>32</sup> Furthermore, the Exchange proposed to add new rule text, pursuant to PHLX Rules 1080(b)(ii)(B), to prevent any Exchange member or member organization from being a party to any arrangement to circumvent the proposed crossing procedures, pursuant to PHLX Rule 1080(b)(ii)(A), by providing an opportunity for a customer, member, member organization, or non-member broker-dealer to execute against an agency order immediately, whether delivered via AUTOM or represented in the trading crowd by a member or a member organization.<sup>33</sup>

## III. Discussion

The Commission has reviewed carefully the proposed rule change, the comment letter, the Exchange's response to the comments, and all the amendments and finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5)<sup>34</sup> of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>35</sup> In particular, the Commission believes that the proposed rule change, as amended by Amendments No. 4 and 5, is consistent with Section 6(b)(5) of the

Act,<sup>36</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Commission anticipates that the Book Match should help to provide faster execution of certain eligible inbound customer and off-floor broker-dealer options orders, while reducing the burden on the Exchange's specialists to manually execute these orders. The Commission believes that the Book Match proposal should benefit customers using the AUTO-X system, as well as customers whose orders are residing in the Exchange's customer limit order book that are at the NBBO.

Moreover, the PHLX represents that the Book Match function would operate consistent with the Plan and PHLX Rules 1083 through 1087 adopted to implement the Plan, and that Book Match would execute eligible linkage orders at the Firm Customer Quote Size in the case of P/A Orders (*i.e.*, the inbound customer orders), and at the Firm Principal Quote Size (*i.e.*, the inbound off-floor broker-dealer orders) in the case of P Orders.

The SEC notes that the Exchange has specifically clarified that off-floor broker-dealer orders are subject to the priority-yielding provision of PHLX Rule 1014(g)(i). The Commission believes that this requirement of the proposal should ensure that retail customers are not adversely affected and should promote investor protection by retaining customer orders' priority on the book.

Moreover, the SEC finds that the proposed rules relating to internalization of orders delivered via AUTOM should address the commenter's concern that the proposed exposure requirement should be applied to any pre-arranged proprietary or solicited crosses.<sup>37</sup> Specifically, by requiring an Exchange member or member organization to expose to the trading crowd for at least 30 seconds an agency order before executing any part of the order as principal, or before such order may be executed by any order solicited by the originating broker-dealer, these rules should potentially ensure that the crossing and facilitation

<sup>28</sup> The Commission recently approved PHLX's proposal to require orders of controlled accounts to yield priority to customer orders in all circumstances. See Securities Exchange Act Release No. 47739 (April 25, 2003), 68 FR 23354 (May 1, 2003). Previously, PHLX ROTs closing in-person were not required to yield priority to orders of customer accounts. *Id.*

<sup>29</sup> At the request of the Exchange, the discussion under this section has been modified slightly to reflect recent changes to the PHLX rules. Telephone conversation between Richard S. Rudolph, Director and Counsel, PHLX and Hong-Anh Tran, Special Counsel, Division, Commission, on September 5, 2003.

<sup>30</sup> See ISE Letter, *supra* note 7.

<sup>31</sup> See Amendment No. 4, *supra* note 9.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> 15 U.S.C. 78f(b)(5).

<sup>35</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>36</sup> 15 U.S.C. 78f(b)(5).

<sup>37</sup> The Commission previously approved similar provisions as part of ISE's rules and CBOEDirect's rules. See ISE Rules 717(d) and (e), Supplemental Materials .01 and .02; and CBOE Rule 43.12C.

procedures described above are not circumvented.

The Commission believes that the prohibition on such arrangements is important to prevent members or member organizations and a third party from having their orders executed against each other, without exposing these orders to other trading interest. The SEC expects the Exchange to develop a surveillance procedure to identify patterns in which a firm places an order on the book and then shortly thereafter submits a contra side order executing against the prior related order. The SEC expects PHLX surveillance to address the SEC's concern that firms may potentially game the internalization aspect of Book Match by mismarking orders.

The Commission finds good cause for approving Amendments No. 4 and 5 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 4 should clarify the scope of the application of the exposure requirement, and the proposed language relating to the internalization of orders delivered via AUTOM and responds to the comment letter. Moreover, Amendment No. 5 is similar to proposed rule changes that were previously approved by the Commission.<sup>38</sup> Thus, Amendment No. 5 concerns issues that previously have been the subject of a full comment period pursuant to Section 19(b) of the Act,<sup>39</sup> and thus raises no novel issues.<sup>40</sup> The SEC notes that Book Match will be deployed, on an issue-by-issue basis, no later than October 1, 2003. Accordingly, the Commission believes that there is good cause, consistent with Section 19(b) of the Act,<sup>41</sup> to approve Amendments No. 4 and 5 to the proposal on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written date, views and arguments concerning Amendments No. 4 and 5, including whether Amendments No. 4 and 5 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth

<sup>38</sup> See Securities Exchange Release Nos. 44462 (June 21, 2001), 66 FR 34495 (June 28, 2001) (order approving the Chicago Board Options Exchange's ("CBOE") proposal relating to automatic execution of certain orders on the CBOE's electronic limit order book); and 42652 (April 7, 2000), 65 FR 20235 (April 14, 2000) (order approving the American Stock Exchange's ("AMEX") proposal relating to Auto-Match).

<sup>39</sup> 15 U.S.C. 78s(b).

<sup>40</sup> See *supra* note 10.

<sup>41</sup> 15 U.S.C. 78s(b).

Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendments No. 4 and 5 that are filed with the Commission, and all written communications relating to Amendments No. 4 and 5 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-2002-86 and should be submitted by October 8, 2003.

#### V. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>42</sup> that the proposed rule change (SR-PHLX-2002-86), as amended by Amendments No. 4 and 5 be, and hereby is, approved, and that Amendments No. 4 and 5 to the proposed rule change be, and hereby are, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>43</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-23739 Filed 9-16-03; 8:45 am]

**BILLING CODE 8010-01-P**

#### SMALL BUSINESS ADMINISTRATION

[License No. 02/72-0609]

##### **Wasserstein SBIC Ventures II, LP; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest**

Notice is hereby given that Wasserstein SBIC Ventures II, LP, 1301 Avenue of the Americas, 44th Floor, New York, New York 10019, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2001)). Wasserstein SBIC Ventures II, LP proposes to provide equity financing to Nephros, Inc., 2960 Broadway, New York, New York 10032. The financing is contemplated for

<sup>42</sup> 15 U.S.C. 78s(b)(2).

<sup>43</sup> 17 CFR 200.30-3(a)(12).

general corporate purposes including product development and marketing.

The financing is brought within the purview of section 107.730(a)(1) of the Regulations because WPPN, LP, an Associate of Wasserstein SBIC Ventures II, LP, currently owns greater than 10 percent of Nephros, Inc. and therefore Nephros, Inc. is considered an Associate of Wasserstein SBIC Ventures II, LP, as defined in section 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: September 11, 2003.

**Jeffrey D. Pierson,**

*Associate Administrator for Investment.*

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#### SOCIAL SECURITY ADMINISTRATION

##### **Privacy Act of 1974, as Amended; Computer Matching Program; (SSA/ Centers for Medicare and Medicaid Services (CMS) Match Number 1076)**

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of renewal of an existing computer matching program which is scheduled to expire on September 24, 2003.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces the renewal of an existing computer matching program that SSA is currently conducting with CMS.

**DATES:** SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives and Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The renewal of the matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefax to (410) 965-8582 or writing to the Associate Commissioner for Income Security Programs, 245 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401. All comments received will be available for public inspection at this address.