

19(b)(2) of the Act,²² that the proposed rule change (SR-NASD-2002-33), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46840; File No. SR-Phlx-2002-59]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change 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 15, 2002.

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 2, 2002, 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 and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal, on an accelerated basis, for an additional six-month pilot, to expire on May 30, 2003.

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

The Phlx proposes to extend, for an additional six months, its pilot program effecting a systems change to AUTO-X, the automatic execution feature of the Exchange's Automated Options Market System ("AUTOM"),³ that would

disengage 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. The pilot program was originally approved on a six-month basis for a limited number of eligible options,⁴ and subsequently extended for an additional six-month period.⁵ Subsequently, the number of options eligible for the pilot was expanded to include all Phlx-traded options.⁶ The pilot has since been extended twice for additional six-month periods, the latest extension is scheduled to expire November 30, 2002.⁷

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 III 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 the pilot program for an additional six-month period. On December 1, 2000, the Initial Pilot Program became effective.⁸ The pilot program was then extended several times and is currently scheduled to end on November 30, 2002.⁹ The pilot program includes the following features:

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's trading floor.

⁴ See Securities Exchange Act Release No. 43652 (December 1, 2000), 65 FR 77059 (December 8, 2000) (SR-Phlx-00-96) ("Initial Pilot Program").

⁵ See Securities Exchange Act Release No. 44362 (May 29, 2001), 66 FR 30037 (June 4, 2001) (SR-Phlx-2001-56).

⁶ See Securities Exchange Act Release No. 44760 (August 31, 2001), 66 FR 47253 (September 11, 2001) (SR-Phlx-2001-79).

⁷ See Securities Exchange Act Release Nos. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002) (SR-Phlx-2002-22) ("Last Extension"); and 45090 (November 21, 2001), 66 FR 59834 (November 30, 2001) (SR-Phlx-2001-100).

⁸ See *supra* note 4.

⁹ See Last Extension, *supra* note 7.

- Once an automatic execution occurs in an option via AUTO-X, the system would begin a "counting" program, which would count the number of contracts executed automatically for that option, up to the maximum guaranteed AUTO-X size,¹⁰ regardless of the number of executions.

- When the number of contracts executed automatically for that option meets the maximum guaranteed AUTO-X size within a fifteen second time frame, the system would cease to automatically execute for that option, and would drop all AUTO-X eligible orders in that option for manual handling by the specialist for a period of thirty seconds to enable the specialist to refresh quotes in that option.¹¹

- Upon the expiration of thirty seconds, automatic executions would resume and the "counting" program would be set to zero and begin counting the number of contracts executed automatically within a fifteen second time frame again, up to the maximum guaranteed AUTO-X size.

- Again, when the number of contracts automatically executed meets the maximum guaranteed AUTO-X size within a fifteen second time frame, the system would drop all subsequent AUTO-X eligible orders for manual handling by the specialist for a period of thirty seconds.

A significant purpose of this pilot program is to enable the Exchange to move towards the dissemination of

¹⁰ Recently, the Exchange filed proposed amendments to Exchange Rule 1080(c) to provide automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum AUTO-X eligible size range, on an issue-by-issue basis. See SR-Phlx-2002-39 (submitted July 2, 2002), and Amendment No. 1 thereto (submitted August 23, 2002). Under that proposal, the maximum guaranteed AUTO-X size may be for a different number of contracts for customer orders than for broker-dealer orders. Upon implementation of that proposal, subject to Commission approval, when the maximum guaranteed AUTO-X size in an option is for a different number of contracts for customer orders than for broker-dealer orders, AUTO-X would be disengaged when the larger of the two maximum guaranteed AUTO-X sizes for the particular option is exhausted.

¹¹ Any orders delivered in excess of the minimum AUTO-X guarantee will be executed to the guaranteed amount and the excess will be dropped to the specialist for manual execution. See Initial Pilot Program, *supra* note 4. The Exchange has represented that, for the thirty seconds that AUTO-X is disengaged, the specialist will be required to honor the disseminated quote unless the specialist is in the process of refreshing his or her quote. The Exchange has further represented that, generally, it should not take the specialist the full thirty seconds to update his or her quote, and that the Exchange will surveil for any potential abuse. Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Sonia Patton, Special Counsel, Division of Market Regulation ("Division"), Commission, on November 7, 2002.

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ AUTOM is the Exchange's electronic order delivery 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

options quotations with size.¹² As discussed above, the “counting” feature of the pilot program functions to disengage AUTO-X for a period of thirty seconds in a given option once the number of contracts automatically executed meets the maximum guaranteed AUTO-X size for that option within a fifteen-second time frame. A similar “counting” mechanism is being utilized as part of the roll-out of a new Auto-Quote system that includes an AUTO-X guaranteed size equal to the Exchange’s disseminated size, subject to a minimum and maximum guaranteed AUTO-X size, on an issue-by-issue basis, which is currently pending Commission approval.¹³ Thus, the proposed extension of the pilot program should allow the Exchange to continue its efforts in the process of deploying the new Auto-Quote system.

The Exchange believes that an extension of the pilot program would enable specialists to continue to provide fair and orderly markets during peak market activity by manually executing orders at correct market prices and refreshing quotations to reflect market demand.

In addition, the Exchange recognizes that Commission staff has inquired into the possibility of re-engaging AUTO-X in less than thirty seconds once the specialist revises the quote. The Exchange’s Financial Automation, Legal, and Regulatory staff have begun to review the issue, specifically as to whether it is feasible to re-engage AUTO-X for an entire issue based upon the revision of a quotation in one single series.¹⁴ Pursuant to this review, the Exchange has determined to automate the re-engagement of AUTO-X for an option issue upon the revision of a quotation in a single series of such issue, provided that the revised quotation occurs in the series that exhausted the AUTO-X guarantee. The Exchange believes that, with the ultimate implementation of the new Auto-Quote system, the Exchange should, over the proposed additional

six-month pilot period, be able to more accurately evaluate its ability to re-engage AUTO-X in an entire class of options upon the revision of a quote in a single option series.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act¹⁵ in general, and with section 6(b)(5) in particular,¹⁶ in that it is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade by enabling Exchange specialists to maintain fair and orderly markets during periods of peak market activity.

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

The Exchange did not receive or solicit any written comments on the proposed rule change.

III. 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 at the Commission’s Public Reference Room. 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-2002-59 and should be submitted by December 13, 2002.

IV. Commission’s Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest.¹⁸ The Commission believes that an extension of the pilot program for an additional six months should allow the Exchange to continue its efforts to deploy its new Auto-Quote system to prepare for the dissemination of quotes with size. In addition, the Commission believes that the proposal should assist specialists in maintaining fair and orderly markets during periods of peak market activity.

The Commission notes that the Exchange is attempting to address its concern regarding the feasibility of re-engaging AUTO-X for a particular issue prior to thirty seconds if the quote has been revised by the specialist before that time period. The Exchange has represented that it will automate the re-engagement of AUTO-X for an option issue once the AUTO-X guarantee in a single series of such issue has been met and the quote has been updated prior to the thirty-second period. Consequently, the Commission believes that extending the pilot program for an additional six months should enable the Phlx to further evaluate its ability to re-engage AUTO-X in an entire class of options upon the revision of a quote in a single option series.

The Commission notes that the Exchange has represented that it will continue to evaluate the pilot program by reviewing specialists’ performance, and by monitoring any complaints relating to the pilot program.¹⁹ Furthermore, the Commission notes that the Exchange has represented that it will continue to post on its website a list of options included in the pilot program, as well as issue a circular to this effect to members, member

¹² The Commission recently approved amendments to the Exchange’s definition of “disseminated size” to mean, with respect to the disseminated price for any quoted options series, at least the sum of limit orders. The specialist and crowd may determine to disseminate a size greater than the sum of limit orders. See Securities Exchange Act Release No. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002) (SR-Phlx-2002-15) (order approving amendments to Exchange Rule 1082(a)(ii) and Option Floor Procedure Advice F-7).

¹³ See SR-Phlx-2002-39, and Amendment No. 1 thereto.

¹⁴ Under Phlx’s current pilot program, AUTO-X is programmed to re-engage after thirty seconds, regardless of whether the specialist has updated its quote prior to that period of time.

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Sonia Patton, Special Counsel, and Sapna C. Patel, Attorney, Division, Commission, on November 6, 2002.

organizations, participants, and participant organizations explaining the pilot program and the circumstances in which the AUTO-X system will not be available for customer orders.²⁰

Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,²¹ for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission recognizes that during the last six-month extension of the pilot program, the Phlx has received no complaints from customers, floor traders, or member firms. The Commission believes that granting accelerated approval to extend the pilot program for an additional six months will allow Phlx to continue, without interruption, the existing operation of its AUTO-X system.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²² that the proposed rule change (SR-Phlx-2002-59), is hereby approved on an accelerated basis, as a six-month pilot, scheduled to expire on May 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Jill M. Peterson,

Assistant Secretary.

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of Environmental Review of Central America Free Trade Negotiations; Public Comments on Scope of Environmental Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: This publication gives notice that, pursuant to the Trade Act of 2002, and consistent with Executive Order 13141 (64 FR 63169) (Nov. 18, 1999) and its implementing guidelines (65 FR 79442), the Office of the United States

²⁰ Phlx has also represented that it will include language in its circular clarifying that AUTO-X will not be re-engaged until the expiration of the thirty second period, even after a quote is revised. Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Sonia Patton, Special Counsel, and Sapna C. Patel, Attorney, Division, Commission, on November 6, 2002.

²¹ 15 U.S.C. 78s(b)(2).

²² Id.

²³ 17 CFR 200.30-3(a)(12).

Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), is initiating an environmental review of the proposed United States-Central America Free Trade Agreement (US-CAFTA). The TPSC is requesting written comments from the public on what should be included in the scope of the environmental review, including the potential environmental effects that might flow from the free trade agreement and the potential implications for U.S. environmental laws and regulations, and identification of complementarities between trade and environmental objectives such as the promotion of sustainable development. The TPSC also welcomes public views on appropriate methodologies and sources of data for conducting the review. Persons submitting written comments should provide as much detail as possible on the degree to which the subject matter they propose for inclusion in the review may raise significant environmental issues in the context of the negotiation.

DATES: Public comments should be received no later than January 15, 2003.

ADDRESSES: Submissions by electronic mail: FR0053@ustr.gov.

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395-6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395-3475. Questions concerning the environmental review should be addressed to Jonathan Fritz, Environment and Natural Resources Section, USTR, telephone (202) 395-7320.

SUPPLEMENTARY INFORMATION:

1. Background Information

On October 1, 2002, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative, Ambassador Robert B. Zoellick, notified the Congress of the President's intent to enter into trade negotiations with the five member countries (*i.e.*, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) of the Central American Economic Integration System (CAEIS). Ambassador Zoellick outlined U.S. objectives for the US-CAFTA in the notification letters to the Congress. The letters to House Speaker Dennis Hastert and Senate President Pro Tempore Robert Byrd can be found on the USTR Website at www.ustr.gov/releases/2002/2002-10-01-centralamerica-house.PDF

and www.ustr.gov/releases/2002/2002-10-01-centralamerica-senate.PDF, respectively. The TPSC invited the public to provide written comments and/or oral testimony at a public hearing on the proposed US-CAFTA scheduled for November 19, 2002, to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (67 FR 63954).

US-CAFTA will build on the Caribbean Basin Initiative (CBI). Since 1985, the U.S. trade relationship with Central America has been driven by U.S. unilateral trade preferences through the CBI. By moving from unilateral trade preferences to a reciprocal FTA, the US-CAFTA will seek to eliminate duties and unjustified barriers to trade in both U.S.- and Central American-origin goods and also address trade in services, trade in agricultural products, investment, trade-related aspects of intellectual property rights, government procurement, trade-related environmental and labor matters, and other issues. US-CAFTA is expected to contribute to stronger economies, the rule of law, sustainable development, and more accountable institutions of governance, complementing ongoing domestic, bilateral, and multilateral efforts in the region. Finally, US-CAFTA will lend momentum to concluding the Free Trade Area of the Americas negotiations by January 2005.

Two-way trade in goods between the United States and the member countries of the CAEIS totaled \$20 billion in 2001, consisting of \$9 billion in U.S. exports and \$11 billion in U.S. imports. Leading U.S. exports to Central America include apparel products, machinery, electrical machinery and equipment, and plastics. Leading U.S. imports from Central America include apparel and textile products and edible fruits.

2. Environmental Review

USTR, through the TPSC, will perform an environmental review of the agreement pursuant to the Trade Act of 2002 and consistent with Executive Order 13141 (64 FR 63169) and its implementing guidelines (65 FR 79442).

Environmental reviews are used to identify potentially significant, reasonably foreseeable environmental impacts (both positive and negative), and information from the review can help facilitate consideration of appropriate responses where impacts are identified. Reviews address potential environmental impacts of the proposed agreement and potential implications for environmental laws and regulations. Determining the review's scope includes consideration of the environmental dimensions of the