

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42120; File No. SR-Phlx-99-33]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Phlx Automatic Communication and Execution System

November 9, 1999.

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 August 24, 1999, 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 Exchange. The proposal amends rules governing the Phlx Automatic Communication and Execution System ("PACE")—the Phlx's automatic order routing and execution system on the equity trading floor. On October 12, 1999, the Exchange filed Amendment No. 1 to the proposed rule change, which entirely replaces and supercedes the initial proposal.³ On November 1, 1999, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Exchange has designated this proposal as one which does not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition under Section 19(b)(3)(A) of the Act⁵ and Rule

19b-4(f)(6) thereunder,⁶ which renders the proposal effective upon filing with the Commission.⁷ 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 Exchange proposes to amend Phlx Rule 229, Commentary .07(c)(i), the automatic price improvement feature of PACE, to state that PACE will determine whether the last sale is an uptick or downtick for providing automatic price improvement, and that the previous day's last sale will not be considered in improving the price. The purpose of this amendment is to conform the language of Phlx Rule 229, Commentary .07(c)(i)(B) to reflect the manner in which PACE currently operates. The text of the proposal is below. Additions are in *italic*.

Rule 229

Philadelphia Stock Exchange Automated Communication and Execution System

Commentary .01-.06 No change.

.07

(a) No change.

(b) No change.

(c) Price Improvement for PACE

Orders

(i) Automatic Price Improvement—Where the specialist voluntarily agrees to provide automatic price improvement to all customers and eligible market orders in a security, automatically executable market and marketable limit orders in New York Stock Exchange and American Stock Exchange listed securities received through PACE for 599 shares or less shall be provided with automatic price improvement of 1/16 from the PACE Quote when received beginning at 9:45 A.M. except where:

(A) a buy order would be improved to a price less than the last sale or a sell order would be improved to a price higher than the last sale; or

(B) a buy order would be improved to the last sale price which is a downtick or a sell order would be improved to the last sale price which is an uptick. *The PACE System will determine whether the last sale price is a downtick or an uptick. The PACE System does not recognize changes from the previous day's close.*

In these situations, the order is not eligible for automatic price

improvement, and is, instead, automatically executed at the PACE Quote. A specialist may voluntarily agree to provide automatic price improvement to larger orders in a particular security to all customers under this provision. A specialist may choose to provide automatic price improvement where the PACE Quote is 3/16 or greater or 1/8 or greater.

(C)-(D) No change.

(ii)-(iv) No change.

.08-.19 No change.

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

PACE is the Exchange's automatic order routing and execution system on the equity trading floor.⁸ PACE accepts orders for manual and automatic execution in accordance with the provisions of Phlx Rule 229, which governs PACE and defines its objectives and parameters. Recently, the Exchange implemented automatic price improvement⁹ where specialists could voluntarily provide 1/16 automatic price improvement to eligible orders in markets where the difference in price between the bid and the offer is either 1/8 or greater, or 3/16 or great.

There are certain exceptions to providing automatic price improvement. One exception is when a buy order would be improved (if automatic price improvement were provided) to the last sale price which is a downtick (or a sell order would be improved to the last sale price which is an uptick).¹⁰ For example, when the market is 41 7/8 x 42 1/16, and the last sale is 42—(a downtick), a buy order would not be automatically improved to 42, but

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange filed the original proposal under Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(5) thereunder, characterizing the proposal as effecting a change in PACE. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b-4(f)(5). The Exchange later clarified that the purpose of the proposal was to conform the language of Phlx Rule 229 to reflect the manner in which PACE currently operates. Because the proposal will not effect any significant change other than to amend Phlx Rule 229 to conform to how PACE's automatic price improvement feature currently operates, the Exchange filed Amendment No. 1 to reflect that the proposal has become effective upon filing of Amendment No. 1, pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b-4(f)(6). The Commission accepted the August 24, 1999 proposal as meeting the 5-day pre-filing requirement under Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

⁴ See letter from Nandita Yagnik, Attorney, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, SEC, dated October 29, 1999 (Amendment No. 2"). In Amendment No. 2, the Phlx corrects inaccuracies in the language of Phlx Rule 229.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

⁷ Because Amendment No. 1 was substantive, the Commission deems the proposal effective as of October 12, 1999, the date that the Exchange filed Amendment No. 1.

⁸ See Phlx Rule 229.

⁹ See Securities Exchange Act Release No. 40006 (May 19, 1998), 63 FR 29288 (May 28, 1998) (SR-Phlx-98-10).

¹⁰ See Phlx Rule 229, Commentary .07(c)(i)(B).

instead executed at $42\frac{1}{16}$, because it would have improved to the last sale, which is a downtick. However, a sell order would be automatically improved and executed at $41\frac{15}{16}$. As it currently operates, PACE does not recognize an uptick or downtick from the previous day's close. Thus, for example, on the opening, eligible buy orders are automatically improved to the last sale, regardless of whether the last sale is a downtick from the previous day's close.

To ensure that Phlx Rule 229 accurately reflects the manner in which the automatic price improvement feature currently operates, the Exchange proposes to amend the automatic price improvement provisions to state that PACE will determine whether the last sale is a downtick or an uptick, and will not recognize changes from the previous day's close. Each day, the first sale is neither an uptick nor downtick from the previous day's close. This allows automatic price improvement to occur, even if the last sale is a downtick from the previous day's close (or in the case of a sell order, an uptick from the previous day's close). For example, if the previous day's closing price was $42\frac{1}{8}$, and the stock opens at 42, the downtick is not relevant to the automatic price improvement process in this example. Thus, where the PACE quote is $41\frac{7}{8} \times 42\frac{1}{16}$, a buy order may be automatically improved to 42 because PACE will not recognize the 42 as a downtick from the previous day's last sale.

While the Exchange originally did not intend for PACE to operate in this manner, the system has operated this way for approximately 12 months. The Exchange believes that conforming the language of Phlx Rule 229 to reflect the manner in which PACE has been operating is the most efficient way to correct the discrepancy between the language of Phlx Rule 229 and the current method of operation of the automatic price improvement feature.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act¹¹ in general, and Section 6(b)(5) of the Act¹² in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market

and a nation market system and protect investors and the public interest by providing PACE customers the ability to receive automatic price improvement, resulting in better execution.

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 proposed rule change, as amended, as become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder¹⁴ because the proposal (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 at least five business days prior to the filing date of the proposed rule change,¹⁵ or such shorter time as designated by the Commission.¹⁶

The Exchange has requested that the Commission accelerate the operative date because the Exchange has not been notified of any negative effects in the current operation of PACE, and because Phlx Rule 229 should reflect PACE's current method of operation.

The Commission finds that it is appropriate to designate the proposal to become operative today, because such designation is consistent with the protection of investors and the public interest. Specifically, the Commission finds that it is appropriate to accelerate the operative date of the proposal because it is in the best interests of investors that the discrepancy between the language of Phlx Rule 229 and the current method of operation of PACE be

corrected as soon as possible, to minimize any potential confusion. For this reason, the Commission finds that designation of the proposal to become operative today is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate this rule change if it appears to the Commission that such action is necessary or appropriate in the public interest or 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 proposal 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 Exchange. All submissions should refer to file number SR-Phlx-99-33, and should be submitted by December 9, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-30089 Filed 11-17-99; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3226]

State of California (And Contiguous Counties in Nevada and Arizona)

Butte, San Bernardino, and Shasta Counties and the contiguous counties of Colusa, Glenn, Kern, Inyo, Lassen, Los Angeles, Modoc, Orange, Plumas, Riverside, Siskiyou, Sutter, Tehama,

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ The Exchange pre-filed the proposed rule change on August 24, 1999. See footnote 3, *supra*.

¹⁶ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

¹⁷ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).