

and Exchange Rule 960.1. The Guide would not apply to violations charged under the Exchange's minor rule violation enforcement and reporting plan, which consists of Exchange Rule 970 and the corresponding OFPA.

### III. Discussion

After careful review, 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.<sup>8</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(6) of the Act,<sup>10</sup> which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.<sup>11</sup>

### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the

proposed rule change (SR-Phlx-2001-60), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45581; File No. SR-Phlx-2002-05]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Amending Existing Exchange Rules and Options Advices To Eliminate References to Fractional Pricing

March 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 14, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Phlx submitted an amendment to the proposed rule change on March 8, 2002.<sup>2</sup> 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 certain Phlx rules and Phlx Options Floor Procedure Advices and Order and Decorum Regulations ("Options Advices"), to remove references to fractional pricing. The text of the proposed rule change is available at the Commission and the Phlx.

#### 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 amend certain existing Exchange rules and Options Advices to delete references to fractions and dual pricing in fractions and in decimals. Although references in Exchange rules to both fractional and decimal pricing were necessary during the phase-in period of decimalization since June of 2000, such references are no longer needed after full, industry-wide implementation of decimal pricing as a result of which all equity and option products are now quoted only in decimals.

In June 2000, the Commission reviewed the Decimals Implementation Plan ("Decimals Plan")<sup>3</sup> submitted by the National Association of Securities Dealers and the national securities exchanges. The Decimals Plan proposed a Minimum Price Variation ("MPV") of \$.01 for equities, and an MPV of \$.05 for options trading under \$3.00 and \$.10 for options trading at \$3.00 or higher, which the Exchange implemented in Phlx Rules 125 and 1034 ("MPV rules").<sup>4</sup> Because decimals pricing was instituted in several phases in the years 2000 and 2001, during which time securities were quoted in both fractional and decimal prices, the Exchange modified its MPV rules and various other rules to include references to both fractional and decimal pricing. After the implementation of full, industry-wide decimalization such that all securities now quote in decimals, references to

<sup>3</sup> See Securities Exchange Release No. 42914 (June 8, 2000), 65 FR 38101 (June 19, 2000).

<sup>4</sup> See Securities Exchange Act Release No. 43421 (October 6, 2000), 65 FR 61207 (October 16, 2000). The Exchange has indicated that it believes the MPV for equities should be \$.05 and not the current \$.01 MPV. See Phlx Decimal Pricing Impact Study for Equities and Options (September 7, 2001) and Phlx comment letter to Commission sub-pennies concept release S7-14-01 (November 19, 2001), wherein Phlx suggested that the investing public and the markets would be best served by mandating a nickel MPV for equity trading. For competitive reasons, however, the Exchange intends to continue the penny MPV for equities, and the nickel/dime MPV for options. The Exchange therefore reaffirms the MPVs currently in its rules: \$.01 for equities (Rule 125), and \$.05 for equity and index options and Exchange-Traded Fund Shares quoting under \$3.00 and \$.10 for those quoting at \$3.00 or higher (Rule 1034).

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78f(b)(6).

<sup>11</sup> The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Phlx submitted a new Form 19b-4, which replaces and supersedes the original filing in its entirety.

fractions and dual pricing in fractions and in decimals are no longer necessary in Phlx rules.

The Exchange therefore proposes to delete references to fractions and dual pricing from the following Phlx Rules of the Board of Governors:<sup>5</sup> 125, Variations in Bids and Offers; 229, Philadelphia Stock Exchange Automated Communication and Execution System; 245, Terms of Offering on Tape; 307 "Part-Paid" Securities; and 803 Criteria for Listing—Tier I.

The Exchange proposes to delete references to fractions and dual pricing from the following Phlx options rules: 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders; 1015 Quotation Guarantees; 1034 Minimum Trading Increments; 1079 FLEX Index and Equity Options;<sup>6</sup> 1080 Philadelphia Stock Exchange Automated Options Market ("AUTOM") and Automatic Execution System ("AUTO-X");<sup>7</sup> and 1033A, Meaning of Premium Bids and Offers.

The Exchange proposes to delete references to fractions and dual pricing from the following Options Advises: A-9, All-or-None Option Orders; A-11, Responsibility to Fill Customer Orders; and F-6, Option Quote Parameters.<sup>8</sup>

An example of the non-substantive changes proposed is that the language of Exchange Rules 125 and 1034 will be modified to eliminate references to fractional increments so that the remaining language will refer only to quoting in decimals. A further example is that references to fractional pricing in Exchange Rule 1080(c)(i)(C) will be eliminated so that the example of a crossed trade in the rule that currently reflects fractional pricing (2 $\frac{1}{8}$  bid, 2 asked) would reflect only decimal pricing (2.10 bid, 2 asked).

<sup>5</sup> The Exchange's Rules of the Board of Governors (numbered between 1 and 1000) are applicable to equity trading. By virtue of Phlx Rule 1000, they are also applicable to options trading except to the extent that specific options rules (numbered 1000 et. seq.) govern or unless the context otherwise requires.

<sup>6</sup> FLEX options are customized index options that trade on the Phlx as well as on other exchanges.

<sup>7</sup> AUTOM is the Exchange's electronic order routing, delivery, execution, and reporting system for equity and index options. AUTO-X, the automatic execution feature of AUTOM, automatically executes eligible public customer market and marketable limit orders in equity and index options.

<sup>8</sup> In addition, subsequent to an amendment of the joint exchange Intermarket Trading System ("ITS") Plan to remove references to fractional pricing, Phlx intends to modify its Rule 2001, Intermarket Trading System, to delete such references. Phlx and the other ITS participants have substantially similar rules implementing the ITS Plan.

According to the Exchange, the proposed amendments are non-substantive, technical changes for the purpose of conforming Exchange rules to the development of full decimalization in the securities industry.<sup>9</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>10</sup> in general, and with Section 6(b)(5),<sup>11</sup> in particular, in that it promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule, 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 either solicited or received.

## I. 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 of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx 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

<sup>9</sup> Certain Phlx rules, such as Rule 650, Mandatory Participation in Decimalization Testing, and Rule 134, Decimal Pricing, expired automatically upon the full, industry-wide implementation of decimal pricing, and do not require any rule change.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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-2002-05 and should be submitted by April 12, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45580; File No. SR-Phlx-2002-18]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Make Permanent a PACE Automatic Price Improvement Pilot Program and a PACE Order Execution and Price Protection Pilot Program

March 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on March 11, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has requested accelerated approval of the proposed rule change. The Commission is publishing this notice to solicit comments on the

<sup>12</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.