

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 PCX. All submissions should refer to file number SR-PCX-2002-13 and should be submitted by April 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45651; File No. SR-Phlx-2002-16]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Amend Phlx Rule 237, "The eVWAP Morning Session"

March 26, 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 7, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 21, 2002, the Phlx amended the proposal.<sup>3</sup> The Phlx filed the

proposal pursuant to section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(5)<sup>5</sup> thereunder as effecting a change in an existing order entry or trading system of the Phlx, which renders the proposal effective upon filing with the Commission. 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 237, "The eVWAP Morning Session," to expand the securities eligible for eVWAP trading to include additional component issues of the Standard and Poor's ("S&P") 500 index, as well as the NASDAQ 100 Index. The text of the proposed rule change is below. Additions are in *italics*; deletions are in *brackets*.

(b) Eligible Securities. The following securities will be eligible for execution in the System:

(i) [Exchange listed] *Any* component issues of the Standard & Poor's 500 index and/or *NASDAQ 100 Index* and any [Exchange listed] issue that has been designated by the compiler of such index for inclusion in such index.

(ii) No change.

(iii) 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 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 Phlx proposes to expand the number of highly capitalized and actively traded securities eligible to participate in eVWAP trading pursuant to Phlx Rule 237. The eVWAP is a pre-opening order matching session for the

electronic execution of large-sized stock orders at a standardized volume weighted average price ("eVWAP Price").

The proposed expansion of eligible securities would expand the eligible issues to include those traded on the NASDAQ National Market that are reported to the NASDAQ Trade Dissemination Service ("NTDS") and are component issues of the S&P 500 index, and the NASDAQ 100 Index. This expansion would increase the number of securities available for eVWAP participation by 100 over the counter NASDAQ National Market Securities that are not presently eVWAP eligible. There are 78 securities that are component issues of the S&P 500 index, 43 that are only NASDAQ 100 Index component issues. A number of eVWAP participants have requested that the Phlx make these issues eligible for inclusion in the system pursuant to Phlx Rule 237 issue eligibility procedures.

The Exchange notes that the additional eligible securities may not be securities that the Exchange otherwise trades on its equity floor. It should be noted that Phlx has recently reinstated its over the counter unlisted trading privileges ("OTC/UTP") pilot program for NASDAQ National Market Securities.<sup>6</sup> These securities may instead only be traded through the eVWAP System; thus, they would be traded on an unlisted trading privileges ("UTP") basis, but without trading during regular trading hours pursuant to regular trading rules and thus without the concomitant quoting obligations. Nevertheless, these eVWAP trades will be reported pursuant to the applicable reporting channel, in the case of NASDAQ National Market Securities the NTDS through the Exchange's communication linkage system supplied by TradinGear.

The Exchange notes that the additional securities that it has requested to be eligible for eVWAP matching are all high capitalization issues, enjoying active trading volume. The S&P 500 index is a key benchmark of large capitalization securities followed actively by institutional money managers and investment fiduciaries who seek to trade component issues relative to their index weightings. Certain of these market participants, among others, have indicated that they see considerable utility in extending the benefits now afforded to a limited group of listed issues to a more expansive eVWAP eligibility list, including all

<sup>8</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 March 20, 2002 letter from Murray L. Ross, Vice President and Secretary, Phlx to Joseph P. Morra, Special Counsel, Division of Market Regulation, SEC and attachments ("Amendment No. 1"). In Amendment No. 1, the Phlx made minor, technical changes to the proposed rule language. The Commission considers the 60-day abrogation

period to have begun on March 21, 2002, the date the Phlx filed Amendment No. 1.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(5).

<sup>6</sup> See Securities Exchange Act Release No. 45182 (December 20, 2001), 66 FR 67609 (December 31, 2001)(SR-Phlx-2000-20).

component issues of the S&P 500 index and the NASDAQ 100 Index. Additionally, the eligibility of these additional issues is critical to developing eVWAP order flow connected with certain index-linked stock basket transactions.

The Exchange notes that several major broker-dealers sponsor alternative trading systems, which currently provide crossing networks that offer the opportunity to trade any listed or Nasdaq reported securities. For example, ITG (POSIT) and Instinet operate crossing systems that offer trade matching in thousands of reported securities without regard to capitalization or dollar volume. As a competitive matter, the Phlx believes that eVWAP needs to offer, at a minimum, the component NASDAQ National Market Securities of the S&P 500 index, as well as those of the NASDAQ 100 Index. The NASDAQ National Market Securities are actively traded and among the largest capitalization securities available in that market.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act<sup>7</sup> in general, and in particular, with Section 6(b)(5),<sup>8</sup> in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices and protect investors and the public interest by expanding the number of highly capitalized, actively traded securities eligible for eVWAP trading.

### *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 either solicited or received.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and subparagraph (f)(5) of Rule 19b-4 thereunder,<sup>10</sup> because it effects a change in an existing order entry or trading

system of the Phlx. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, 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 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 filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2002-16 and should be submitted by April 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways

to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer at the following addresses:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503.

(SSA), Social Security Administration, DCFAM, Attn: SSA Reports Clearance Officer, 1-A-21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

I. The information collection listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer at 410-965-0454, or by writing to her at the address listed above.

1. Disability Hearing Officer's Decision—Title XVI Disabled Child Continuing Disability Review—0960-NEW. The information collected on form SSA-1209 will be used by State Disability Hearing Officers (DHO) to formalize disability decisions. The form will aid the DHO in addressing the crucial elements of the case in a sequential and logical fashion. The form is used as the official determination of the DHO's decision and the personalized portion of the notice to the claimant.

*Number of Respondents:* 35,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 1 1/4 hours.

*Estimated Annual Burden:* 43,750 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965-0454, or by writing to her at the address listed above.

1. Statement Regarding the Inferred Death of an Individual By Reason of Continued and Unexplained Absence—0960-0002. The information collected on Form SSA-723-F4 is needed to determine if SSA may presume that a

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(5).

<sup>11</sup> 17 CFR 200.30-3(a)(12).