SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46323; File No. SR–Phlx–2002–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Provide Automatic Executions for Eligible Orders at the Exchange's Disseminated Size, Subject to a Minimum and Maximum Eligible Size Range

August 8, 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 July 3, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx") 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Phlx proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)[3] to provide automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum eligible size range to be determined by the specialist, on an issue-by-issue basis. The Exchange also proposes to delete references to public customer orders from the description of AUTO–X set forth in Exchange Rule 1080(c) in order to reflect that, in certain issues, orders for the proprietary account(s) of broker-dealers may be eligible for automatic execution via AUTO–X.

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[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 automatically if the order is 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. An order may also be executed partially by AUTO–X and partially manually when the size of an eligible inbound market or marketable limit order exceeds the guaranteed AUTO–X size.

The text of the proposed rule change is set forth below. Deletions are in brackets; additions are in italics.

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a)–(b) No change.

(c) AUTO–X is a feature of AUTOM that automatically executes eligible [public customer] market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO–X automatically executes eligible orders using the Exchange disseminated quotation (except if executed pursuant to the NBBO Feature in sub-paragraph (i) below) and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO–X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO–X is not engaged, such as pursuant to sub-paragraph (iv) below. An order may also be executed partially by AUTO–X and partially manually. The Options Committee may for any period restrict the use of AUTO–X on the Exchange in any option or series provided that the effectiveness of any such restriction shall be conditioned upon its having been approved by the Securities and Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder. Any such restriction on the use of AUTO–X approved by the Options Committee will be clearly communicated to Exchange membership and AUTOM users through an electronic message sent via AUTOM and through an Exchange information circular. Such restriction would not take effect until after such communication has been made. [Currently, orders up to 250 contracts, subject to the approval of the Options Committee, are eligible for AUTO–X.]

Currently, the Exchange's maximum allowable AUTO–X guarantee is 250 contracts. For each option, there shall be a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size. Such minimum and maximum sizes may be for a different number of contracts for customer orders than for broker-dealer orders, as determined by the specialist and subject to the approval of the Options Committee.

The Exchange shall provide automatic executions for eligible orders

up to the Exchange's disseminated size as defined in Exchange Rule 1082, subject to a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size (up to a size of 250 contracts).

• *If the Exchange's disseminated size is greater than the minimum guaranteed AUTO–X size, and less than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to Exchange's disseminated size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.*

• *If the Exchange's disseminated size is less than the minimum guaranteed AUTO–X size for that option, inbound eligible orders shall be automatically executed up to such minimum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.*

• *If the Exchange's disseminated size is greater than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to such maximum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist.*

The minimum and maximum guaranteed AUTO–X size applicable to each option shall be posted on the Exchange's web site.

The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(i)–(v) No change.

(d)–(j) No change.

Commentary: No change.

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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 codify a change in the Exchange's AUTOM and Auto-Quote [4] system that would allow the Exchange to automatically execute eligible orders [5] at the Exchange's disseminated size, as defined in proposed Exchange Rule 1082(a)(ii).[6]

Currently, the Exchange automatically executes eligible orders at a size equal to the AUTO–X guarantee for a given option, regardless of the Exchange's disseminated size. The proposed rule change would allow the Exchange to provide automatic executions for eligible orders in a size equal to the Exchange's disseminated size, subject to a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size (which cannot exceed the Exchange's floor-wide allowable maximum guaranteed AUTO–X size for an option, which is currently 250 contracts), to be determined by the specialist and subject to the approval of the Options Committee.[7]

The proposed amended rule would include the following provisions:

1. If the Exchange's disseminated size is greater than the minimum guaranteed AUTO–X size, and less than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to the Exchange's disseminated size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.

Example 1:
Minimum Guaranteed AUTO-X Size = 10
Maximum Guaranteed AUTO-X Size = 50
Disseminated Size = 35

Inbound Order Size = 90

In this example, the Exchange would automatically execute 35 contracts (the disseminated size). The specialist would be responsible to execute the remaining 55 contracts manually or, in the case of a limit order, to place the remaining 55 contracts on the limit order book, if the automatic execution has exhausted the size at that price.

2. If the Exchange's disseminated size is less than the minimum guaranteed AUTO–X size for that option, inbound eligible orders delivered via AUTOM shall be automatically executed up to such minimum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.

Example 2:
Minimum Guaranteed AUTO–X Size = 10
Maximum Guaranteed AUTO–X Size = 50
Disseminated Size = 6
Inbound Order Size = 20

In this example, the Exchange would automatically execute 10 contracts (the minimum guaranteed AUTO–X size) even though its disseminated size is for 6 contracts. The specialist would be responsible to execute the remaining 10 contracts manually at that price or the next best price or, in the case of a limit order, to place the remaining 10 contracts on the limit order book, if the automatic execution has exhausted the size at that price.

3. If the Exchange's disseminated size is greater than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to such maximum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist at the disseminated price.

Example 3:
Minimum Guaranteed AUTO–X Size = 10
Maximum Guaranteed AUTO–X Size = 50
Disseminated Size = 100
Inbound Order Size = 90

In this example, the Exchange would automatically execute 50 contracts (the maximum guaranteed AUTO–X size). The specialist would be responsible to execute the remaining 40 contracts manually at that same price because the Exchange's rules concerning firm quotations [8] require the Exchange to be firm at that price up to the disseminated size of 100 contracts.

The proposed rule would provide that the minimum guaranteed AUTO–X size and maximum guaranteed AUTO–X size for a given option is to be determined on an issue-by-issue basis by the specialist and subject to the approval of the Options Committee.[9] In determining

whether to approve the minimum and maximum guaranteed AUTO–X size for each option, the Options Committee may consider, without limitation, the number of series and open interest in the option; the volatility of the option; the liquidity of the option; historical and projected volume of trading in the option; and the projected share of total trading in the option that is likely to occur at the Exchange, as well as other relevant factors.

The proposed rule reflects recent technological advancements and changes to the Exchange's Auto-Quote system designed to enable the Exchange to eventually disseminate options quotations with actual size. The instant proposal is intended to codify the interaction of the new Auto-Quote system with AUTO–X, specifically addressing the capability of AUTO–X to provide automatic executions for eligible orders at the Exchange's actual disseminated size. The Exchange believes that providing automatic executions at the Exchange's disseminated size should enhance the ability of investors to ascertain the true number of contracts available for automatic execution of eligible orders, thus contributing to transparency in the markets.

The Exchange also proposes to delete references to public customer orders from the description of AUTO–X set forth in Exchange Rule 1080(c) in order to reflect that, in certain issues, orders for the proprietary account(s) of broker-dealers may be eligible for automatic execution via AUTO–X.[10] Minimum and maximum sizes could be for a different number of contracts for broker-dealer orders than for customer orders.[11]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b) [13] in particular, in that it is designed to perfect the mechanisms of a free and

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[4] Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations. *See* Exchange Rule 1080, Commentary .01(a).

[5] AUTO–X eligible order are orders that do not otherwise bypass AUTO–X for manual handling by the specialist in accordance with Exchange Rule 1080(c)(iv).

[6] *See* SR–Phlx–2002–15.

[7] The Exchange notes that the Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Commission pursuant to section 19(b)(3)(A) of the Act. *See* Exchange Rule 1080(c).

[8] *See* Exchange Rule 1082, Firm Quotations.

[9] The Exchange has stated that the maximum guaranteed AUTO–X size for a given option generally would not be changed intra-day. Telephone call between Sonia Patton, Division of Market Regulation (''Division''), Commission, and Richard Rudolph, Director and Counsel, Phlx (August 5, 2002).

[10] *See* Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR–Phlx–2001–40).

[11] Currently, the Exchange is operating an AUTO–X pilot program that disengages AUTO–X in an option for 30 seconds when the number of contracts executed automatically for the option meets the AUTO–X guarantee within a 15 second time frame. *See* Securities Exchange Act Release No. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002). The Exchange has stated that this pilot will continue to operate and that if there is a different size for customers and broker-dealers, the larger of the two will constitute the AUTO–X guarantee for purposes of the pilot. Telephone call between Sonia Patton, Division, Commission, and Richard Rudolph, Director and Counsel, Phlx (August 5, 2002).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by establishing the capability of the Exchange to provide automatic executions for eligible orders at the disseminated size, subject to minimum and maximum guaranteed AUTO–X sizes.

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

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 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 Phlx. All submissions should refer to File No.

SR–Phlx–2002–39 and should be submitted by September 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,
Deputy Secretary.
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46325; File No. SR–Phlx–2002–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change, and Amendment Nos. 1, 2, 3, 4, and 5 Thereto by the Philadelphia Stock Exchange, Inc. To Redefine the Exchange's Disseminated Size for Options Quotations

August 8, 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 March 5, 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 and II below, which Items have been prepared by the Exchange. On April 15, 2002, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On June 12, 2002, the Phlx submitted Amendment No. 2 to the

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[14] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 12, 2002 ("Amendment No. 1"). In Amendment No. 1, the Phlx: (1) Amended Phlx Rule 1082, Firm Quotations, and Option Floor Procedure Advice ("Advice") F–7, Bids and Offers, to specify that the term "disseminated size" means either (a) the AUTO–X guarantee for the quoted option, except that the disseminated size of bids and offers on the book shall be ten contracts, or (b) the sum of certain limit orders on the limit order book, subject to specific qualifying sizes for inclusion in the Exchange's disseminated size; (2) made a technical clarification concerning a previously filed Phlx proposal to disseminate options quotations with size; (3) added a paragraph specifying that specialists may supply their own bids and offers, including the size of such bids and offers, through proprietary systems called Specialized Quote Feeds ("SQFs"), and explained that the disseminated size of any such bid or offer shall be firm; and (4) explained that during the roll out period of the new quotes with size system, the Exchange will have two systems operating, the new Auto-Quote system and the current Auto-Quote system. Once the new Auto-Quote system roll out is complete, the Phlx committed to deleting references to the current Auto-Quote system.

proposed rule change.[4] On June 17, 2002, the Phlx submitted Amendment No. 3 to the proposed rule change.[5] On July 31, 2002, the Phlx submitted Amendment No. 4 to the proposed rule change.[6] On August 5, 2002, the Phlx submitted Amendment No. 5 to the proposed rule change.[7] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is

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[4] *See* letter and accompanying Form 19b–4 from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 11, 2002 ("Amendment No. 2"). In Amendment No. 2, the Phlx amended the rule text to reflect that, once the Exchange's new Auto-Quote system is deployed, the Exchange's disseminated size would be equal to the sum of limit orders at the Exchange's disseminated price, or, if there are no limit orders at the Exchange's disseminated price, the AUTO–X guarantee for the particular option, but such size may be increased to reflect the specialist's and trading crowd's sizes. The Exchange represented that during the time that the new Auto-Quote system is deployed, some options series will continue to reflect the current disseminated size of either the AUTO–X guarantee for that option or, respecting limit orders on the book at the Exchange's disseminated price, a size of 10 contracts. Amendment No. 2 also included a proposal to increase the minimum AUTOM order delivery size for broker-dealer orders from one contract to ten contracts. Finally, the Phlx represented that the proposed rule change would not change the functionality of AUTO–X.

[5] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 14, 2002 ("Amendment No. 3"). In Amendment No. 3, the Phlx: (1) deleted the word "customer" from the relevant amended portion of Advice F–7(a); (2) deleted the phrase "the AUTO–X guarantee for the particular option, but may be for a greater size, reflecting" from Advice F–7(b)(2); (3) clarified that in the another order cited in the proposed rule change the Commission approved the delivery of off-floor broker-dealer orders via AUTOM, and the availability of automatic execution for certain off-floor broker-dealer orders via AUTO–X, on a six-month pilot basis; (4) clarified that the Exchange's disseminated size would be at least the sum of limit orders, and the specialist and crowd would be able to determine to disseminate a size greater than the sum of limit orders, and made conforming changes to the rule text; and (5) represented that, with respect to booked limit orders at the Exchange's best/bid offer, the new Auto-Quote system will decrement the disseminated size automatically, and that the specialist would be responsible to manually decrement the size of limit orders represented in the crowd at the Exchange's best/bid offer.

[6] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Kelly Riley, Senior Special Counsel, Division, Commission, dated July 29, 2002 ("Amendment No. 4"). In Amendment No. 4, the Phlx: (1) Amended Phlx Rule 1082(a)(ii)(A) and Advice F–7(a) to reflect that the current Auto-Quote technology would be scheduled to be phased-out by September 2002; and (2) deleted its previous proposal to amend Commentary .05 to Phlx 1080 regarding the minimum size of off-floor broker-dealer orders delivered via AUTOM.

[7] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Kelly Riley, Senior Special Counsel, Division, Commission, dated August 2, 2002 ("Amendment No. 5"). In Amendment No. 5, the Phlx made technical amendments to the text of the proposal in response to comments received from Commission staff.