

price at which a transaction is reported to the Consolidated Tape System determines whether or not a member in one Participant market who has displayed a better bid or offer within the linked ITS market is entitled to satisfaction as a consequence of an inferior priced transaction reported to the tape in another market. The ITS Participants believe that the current NASD trade reporting rule, containing the "reasonably related to the market" provision, provides latitude to NASD members to report a price to the tape different from the execution price confirmed to customers, thereby creating the potential to avoid the Trade-Through Rule.

In its letter to the Commission, CHX asserts that the NASD's proposed rule change does not address the discretionary nature of the NASD's current trade reporting rule because it "would merely eliminate the standard articulating how to calculate the markup or markdown." The NASD responds that it "fails to see the relevance of the argument that a third market maker could avoid a trade-through by reporting a price within the national best bid and offer while providing a different price to its customer, when that difference must be disclosed to the customer and assessed as a cost of trading on the same basis as any other charge or commission."<sup>10</sup> The NASD further disagrees with the CHX's assertion that the NASD's proposed rule change limits the value of a trade-through rule. CHX argues that a market maker's discretion to report a trade at a prevailing market price at the time of the trade, as long as the customer is made aware of the difference between the reported price and the net price (the markup), enables a market maker to avoid a trade-through. In response, the NASD states that its trade reporting rule emphasizes the value of a trade-through rule by encouraging market participants to provide an execution at a better price than the national best bid or offer. The NASD further believes that such an execution would be "exactly comparable with orders executed on an exchange where the reported price does not include the broker's commission."<sup>11</sup>

The Commission finds that eliminating the "reasonably related to the market" language helps to clarify the NASD's trade reporting rule. As the NYSE stated, removal of the "reasonably related to the prevailing market" language would resolve its long-

standing concern<sup>12</sup> with the trade reporting issue.<sup>13</sup> Furthermore, effective surveillance and confirmation disclosure of the charges to the customer should help to enforce these trade reporting obligations.<sup>14</sup> Specifically, in the event a broker-dealer is acting as principal in a transaction in a reporting security, the confirmation disclosure rule, Exchange Act Rule 10b-10, requires a broker-dealer to disclose to a customer the trade price reported to the Consolidated Tape, the net price to the customer in the transaction, and the difference, if any, between the reported price and the price to the customer. If a broker-dealer is acting as agent for a customer, the member must confirm to the customer the gross trade price (which is the price reported to the Consolidated Tape), and the commission equivalent as well as the net price to the customer.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-NASD-98-61) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-19488 Filed 7-29-99; 8:45 am]

BILLING CODE 8010-01-M

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41646; File No. SR-Phlx-99-21]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Establish Fees for Transactions Executed Through the Volume Weighted Average Price ("VWAP") Trading System ("VTS")

July 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 28, 1999, the Philadelphia Stock Exchange,

<sup>12</sup> See, e.g., Letter to Jonathan G. Katz, Secretary, Commission, from James E. Buck, Senior Vice President and Secretary, NYSE, dated June 25, 1997.

<sup>13</sup> See NYSE letter.

<sup>14</sup> See Exchange Act Release No. 18713 (May 6, 1982), 47 FR 20413, 20415 n.13 (May 12, 1982).

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

<sup>16</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.

Inc. ("Exchange" or "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 Exchange. 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 Commission recently approved the Exchange's proposal to operate the Volume Weighted Average Price ("VWAP")<sup>3</sup> Trading System ("VTS")<sup>TM</sup> as a facility of the Exchange.<sup>4</sup> The VTS will provide a daily pre-opening order matching session for the execution of large stock orders at the VWAP. The Exchange now proposes to establish a fee schedule for trades executed through the VTS.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

#### 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

On March 24, 1999, the Exchange received Commission approval to operate the VTS as a facility of the Exchange. The VTS will provide a daily pre-opening order matching session for the execution of large stock orders at the VWAP. Approximately 300 of the most highly capitalized and highly liquid equity securities that are listed on the New York Stock Exchange will be

<sup>3</sup> VWAP is a registered trademark of the Universal Trading Technologies Corporation ("UTTC"). The VTS<sup>TM</sup> is the property of UTTC.

<sup>4</sup> See Securities Exchange Act Release No. 41210 (Mar. 24, 1999), 64 FR 15857 (Apr. 1, 1999) ("VTS Approval Order"). The approval is effective for a 1 year pilot period.

other markets to derive the benefit of the block without breaking it up.

<sup>10</sup> See NASD letter.

<sup>11</sup> See NASD letter.

eligible for matching during the pre-opening session. During the pre-opening session, the VTS will electronically match orders for execution at the VWAP according to the algorithm developed by the Universal Trading Technologies Corporation. The matched and executed orders will be assigned a final VWAP after the close of regular trading.

As a facility of the Exchange, the VTS will operate using Exchange equipment and personnel, allow Exchange floor traders to participate, and rely upon the Stock Clearing Corporation of Philadelphia ("SCCP") to process VTS trades.<sup>5</sup> Matches performed during the pre-opening session will be regulated and reported as Exchange trades. Further details regarding the operation of the VTS appear in the VTS Approval Order and Exchange Rule 237, "The Universal Trading System Morning Session," which governs the operation of VTS.

The Exchange now proposes to adopt fees for trades executed through the VTS. Although trades executed on behalf of VTS users will result in transaction fees, it is only Exchange member firms and clearing firms that will be billed and held responsible for paying the fees. Thus, the transaction fees resulting from a VTS user's trading activity will be billed to the Exchange member or clearing firm through which the VTS orders were routed. Although the transaction fees vary primarily according to the ultimate user that receives trade execution through the VTS (e.g., retail customer, specialist, Exchange member), they also depend on the type of trade (e.g., cross versus non-cross), and the annual volume of VTS trading activity. The proposed fee schedule is as follows:

- Institutional user and retail customer user (non-cross trades):

1 share to 10 million shares per year:

\$0.02 per share

>10 million to 20 million shares per year: \$0.015 per share

>20 million shares per year: \$0.01 per share

- Institutional user and retail customer user (cross trades):

Intra-firm: \$0.005 per share<sup>6</sup>

Inter-firm: \$0.01 per share

- Non-member/non-institutional user: \$0.015 per share.

- Specialist or alternate specialist Committer: No charge.
- Member off-floor liquidity provider: \$0.01 per share.
- Member user (not enrolled as Committer): \$0.01 per share.

Under the proposal, the fees for non-cross trades executed on behalf of a institutional user<sup>7</sup> or retail customer user<sup>8</sup> will be predicated upon the aggregate number of shares that such institutional user or retail customer user trades annually through VTS. In calculating the number of shares that each user trades through the VTS, the Exchange shall always treat January 1 as the start of the year. For the first 10 million shares traded per year, the fee will be \$.02 per share. For more than 10 million shares up to 20 million shares per year, the fee will be \$.015 per share. For greater than 20 million shares per year, the fee be \$.01 per share.<sup>9</sup> These volume discount thresholds will be prorated based upon a user's enrollment date.<sup>10</sup> The Exchange believes that reducing fees for increased trading volume should help attract order flow to the VTS.

With respect to cross orders<sup>11</sup> for institutional users and retail customer users, the Exchange proposes to charge \$.005 per side, per share, for intra-firm crosses and \$.01 per share for inter-firm crosses.<sup>12</sup> The trade volume of users' cross orders (inter-firm and intra-firm

<sup>7</sup> An institutional user is an entity not registered as a broker-dealer or doing business as a hedge fund (i.e., private investment pool), but one that serves in a fiduciary capacity. Such entities include, but are not limited to: qualified pension plans, investment companies registered under the Investment company Act of 1940, bank trust departments, corporations that purchase securities for corporate purposes, and insurance companies. See Exchange Rule 237(c)(v).

<sup>8</sup> The level of fees will not affect the manner in which orders are matched pursuant to the UTTC matching algorithm. See Exchange Rule 237(e).

<sup>9</sup> The Exchange's billing system monitors users' VTS transaction volume on an aggregate and ongoing basis. Therefore, discounts are immediately applied toward any VTS transaction volume that exceeds the discount thresholds. Telephone conversation between Michael L. Loftus, Attorney, Division of Market Regulation, Commission, and Nandita Yagnik, Counsel, Exchange, on July 8, 1999.

<sup>10</sup> For example, if a new user enrolled on July 1, the volume discount thresholds would be reduced by 50% because 50% of the year would have expired. Thus, the user's trades would generate transaction fees of \$.02 for the first five million shares matched, \$.015 for matches greater than 5 million shares up to 10 million shares, and \$.01 for matches over 10 million shares.

<sup>11</sup> A cross order is a two-sided order with both sides comprised of non-member interest, with instructions to match the identified buy-side with the identified sell-side. The two sides making up the cross can be entered separately, with the contra-side identified. See Exchange Rule 237(d)(i)(C).

<sup>12</sup> Inter-firm cross orders refer to cross orders where the identified contra-sides are from different firms.

cross orders) will not be counted toward the volume aggregations applicable to non-cross orders.

Trades for non-member/non-institutional users<sup>13</sup> will be assessed fees of \$.015 per share. Trades for specialist and alternate specialist Committers<sup>14</sup> will not be charged transaction fees for VTS trades. Trades for the other type of Committer—Exchange members who serve as off-floor liquidity providers—will be charged \$.01 per share. Lastly, trades for member users who are not enrolled as Committers will be assessed fees of \$.01 per share.

Although Exchange members will be billed for the VTS trades of their customer users, no other separate fee shall apply to members acting as brokers. This practice is similar to other fee arrangements currently employed by the Exchange, including the assessment of fees for equity option transactions.<sup>15</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>16</sup> in that it provides for the equitable allocation of reasonable fees and other charges among members using VTS. The Exchange further believes that the proposed fee schedule is reasonable and will help attract order flow to VTS.

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

The Exchange believes that the proposed rule change will not 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 solicit or receive written comments with respect to the proposed rule change.

<sup>13</sup> The non-member/non-institutional user category includes non-member broker-dealers.

<sup>14</sup> "Committers" are Exchange members who agree to provide contra-side liquidity on a proprietary basis. Committers are required to provide a minimum volume guarantee of 2,500 shares for each side of the market. Committer status is restricted to Exchange members that are: (i) Phlx floor traders, Phlx specialists, or Phlx alternate specialists; or (ii) off-floor liquidity providers. Specialists and alternate specialists may act as Committers only in their specialty issues. See Exchange Rule 237(c)(i). A more thorough description and discussion of order types, classes of users, and conditions to access appear in Exchange Rule 237 and the VTS Approval Order.

<sup>15</sup> See Securities Exchange Act Release No. 41317 (Apr. 21, 1999), 64 FR 23144 (Apr. 29, 1999).

<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>5</sup> The SCCP has filed a separate proposal with the Commission to establish fees for the trade recording and confirmation services that SCCP will provide for VTS trades. See File No. SR-SCCP-99-02.

<sup>6</sup> Intra-firm cross trades refer to cross trades where the identified contra-sides are from the same firm. Because the same firm is on both sides of an intra-firm cross trade, the \$.005 per share fee applies to each side, thus totaling \$.01 per share.

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

Because the foregoing proposed rule change establishes a due, fee, or charge imposed by the Exchange, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(2) thereunder.<sup>18</sup> 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.<sup>19</sup>

### 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, N.W., Washington, D.C. 20549-0609. Copies of the submissions, 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 persons, 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-99-21 and should be submitted by August 20, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-19489 Filed 7-29-99; 8:45 am]

BILLING CODE 8010-01-M

### SMALL BUSINESS ADMINISTRATION

#### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.  
**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before August 30, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, (202) 205-7044.

#### SUPPLEMENTARY INFORMATION:

*Title:* U.S. Small Business Administration's Application Survey.  
*Form No.:* 1843.

*Frequency:* On Occasion.

*Description of Respondents:* Person's seeking employment with SBA.

*Annual Responses:* 75.

*Annual Burden:* 13.

Dated: July 22, 1999.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 99-19480 Filed 7-29-99; 8:45 am]

BILLING CODE 8025-01-P

### DEPARTMENT OF STATE

[Delegation of Authority No. 145-16]

#### Redelegation of Responsibilities and Functions of the U.S. Arms Control and Disarmament Agency to the Department of State

By virtue of the authority vested in me as Secretary of State, including

section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651), and the Chemical Weapons Convention Implementation Act of 1998 and the Foreign Affairs Reform and Restructuring Act of 1998 (as contained in Pub. L. 105-277), section 1(a) of State Department Delegation of Authority No. 145 of February 4, 1980 (45 FR 11655), as amended, is hereby further amended:

(1) By inserting at the end thereof the following new subsections:

“(13) The functions conferred on the Secretary by the Chemical Weapons Convention Implementation Act of 1998 (as contained in Pub. L. 105-277).

“(14) The functions that, before the effective date described in section 1201 of the Foreign Affairs Reform and Restructuring Act of 1998 (as contained in Pub. L. 105-277) were vested in the United States Arms Control and Disarmament Agency, including any functions conferred on the Director or any officer or employee of that agency, and that, pursuant to the provisions of the Act (including amendments made by that Act), are now conferred on the Secretary.”; and

(2) By striking the word “Affairs” following the phrase “Under Secretary for Arms Control and International Security”.

This delegation shall be published in the **Federal Register**.

Dated: July 21, 1999.

**Madeleine K. Albright,**

*Secretary of State.*

[FR Doc. 99-19612 Filed 7-29-99; 8:45 am]

BILLING CODE 4710-10-M

### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of a Current Public Collection of Information

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on a currently approved public information collection which will be submitted to OMB for renewal.

**DATES:** Comments must be received on or before September 28, 1999.

**ADDRESSES:** Comments may be mailed or delivered to the FAA at the following address: Ms. Judith Street, Room 612, Federal Aviation Administration, Standards and Information Division, APF-100, 800 Independence Ave., SW., Washington, DC 20591.

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

<sup>19</sup> In reviewing this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f)

<sup>20</sup> 17 CFR 200.30-3(a)(12).