

general, to protect investors and the public interest.

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

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

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

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,²¹ and Rule 19b-4(f)(1)²² thereunder, in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule.

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 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 NASD. All submissions should refer to file number

SR-NASD-00-44 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-20058 Filed 8-8-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43110; File No. SR-NYSE-00-19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Rule 1006 of NYSe Direct+™, the Exchange's Automatic Execution Facility for Certain Limit Orders

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 May 1, 2000, the New York Stock Exchange, Inc. ("NYSE" 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 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 proposed rule change consists of proposed new Exchange Rule 1006, which will provide automatic execution of coupled orders of 1099 shares or less at a price that is at or within the Exchange's published quotation through the NYSe Direct+™ facility. It also provides for an amendment to the list of rules subject to summary fine procedures under Exchange Rule 476A. The text of the proposed rule change is set forth below. All language is being added.

Rule 1006: Automatic Execution of Coupled Orders

(a) A member or member organization may enter for automatic execution against each other a limit order to buy of 1099 shares or less coupled with a limit order to sell the same number of shares, as follows:

(i) if both orders are for the accounts of non-members that are not broker-dealers, the orders may be priced and executed: (1) at the NYSE's published bid price or within the NYSE's published bid-offer spread, if the first order received by the member or member organization was an order to buy; or (2) at the NYS's published offer price, or within the NYSE's published bid-offer spread, if the first order received by the member or member organization is an order to sell;

(ii) if one of the orders is for the account of a broker-dealer, and (1) the non-member non-broker-dealer is entering a sell order, the coupled orders may be priced either at the NYSE's published offer price or a price within the bid offer spread, or (2) if the non-member non-broker-dealer is entering a buy order, the coupled orders may be priced either at the NYSE's published bid price, or within the bid-offer spread.

(b) Coupled orders as described in paragraph (a) may be entered for any amount up to 1099 shares, regardless of the size of the then-prevailing NYSE published bid or offer. Coupled orders shall have priority over all other orders at that price, regardless of time of entry, and shall be immediately executed and reported. Coupled orders may not be entered if both sides are for the account of a broker-dealer.

* * * * *

List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A

* * * * *

Failure to adhere to procedures for internalization (automatic execution of coupled orders) under the NYSe Direct+™ facility (Rule 1006)

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.

²¹ 15 U.S.C. 78s(b)(3)(A)(i).

²² 17 CFR 240.19b-4(f)(1).

²³ 17 CFR 200.30-3(a)(12).

²² 17 CFR 240.19b-4(f)(1).

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR-NYSE-00-18, the Exchange filed a proposed rule change to provide for the automatic execution of limit orders of 1099 shares or less ("auto ex" orders) against trading interest reflected in the Exchange's published quotation in a new trading facility, NYSE Direct+TM.³ The purpose of the proposed rule change filed herein is to provide for the automatic execution of coupled orders (a buy and sell order paired-off against each other) of 1099 shares or less at a price that is at or within the Exchange's published quotation through NYSE Direct+TM. Such orders may be priced and executed only at the minimum trading variation permitted on the Exchange.

Rule 1006 provides for the automatic execution of coupled orders of 1099 shares or less, as follows:

(i) if both orders are for the accounts of non-members that are not broker-dealers, the orders may be priced and executed (1) at the NYSE's published bid price or between the NYSE's published bid-offer spread, if the first order received by the member or member organization was an order to buy; or (2) at the NYSE's published offer price, or between the NYSE's published bid-offer spread, if the first order received by the member or member organization is an order to sell;

(ii) if one of the orders is for the account of a member, member organization or broker-dealer, and (1) the non-member non-broker-dealer is entering a sell order, the coupled orders may be priced at the NYSE's published offer price, or a price between the bid-offer spread, or (2) if the non-member non-broker-dealer is entering a buy order, the coupled orders may be priced at the NYSE's published bid price, or between the bid-offer spread.

Rule 1006 provides that coupled orders as described above have priority over all other trading interest at the execution price, regardless of time of entry. Coupled orders may not be entered if each order is for the account of a member, member organization, or broker-dealer.

Rule 1006 would permit in-house agency crosses, with the better price being received by whichever order was received first by the member or member organization in any case where the execution price is at the bid or offer.

Rule 1006 also permits members and member organizations to trade as dealer or principal with agency orders, provided that the agency orders receive a price that is better than the published bid (in the case of an order to sell) or the published offer (in the case of an order to buy). As noted in SR-NYSE-99-48,⁴ the Exchange believes that internalization, if permitted by the Commission, should be tied to a public order price improvement requirement.

Addition to Rule 476A Summary Fine List. The Exchange is also seeking approval to add to the List of Rules subject to imposition of fines under Rule 476A the failure by members or member organizations to comply with Rule 1006, which provides for internalization (the automatic execution of coupled orders of 1099 shares or less). Rule 476A provides that the Exchange may impose a fine, not to exceed \$5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.

The purpose for the proposed rule change to Rule 476A is to facilitate the Exchange's ability to induce compliance with all aspects of the above-cited rule. The Exchange believes failure to comply with the requirements of the rule and procedures should be addressed with an appropriate sanction and seeks Commission approval to add violations of these requirements to the Rule 476A List so as to have a broad range of regulatory responses available. The Exchange believes that this would more effectively encourage compliance by enabling a prompt, meaningful and heightened regulatory response (e.g., the issuance of a fine rather than a cautionary letter) to a minor violation of a rule.

The Exchange wishes to emphasize the importance it places upon compliance with the above-named rule. While the Exchange, upon investigation, may determine that a violation of this rule is a minor violation of the type which is properly addressed by the procedures adopted under Rule 476A, in those instances where investigation reveals a more serious violation of the rule, the Exchange will provide an appropriate regulatory response. This includes the full disciplinary procedures available under Rule 476.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act⁵ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act⁶ in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

With respect to the addition to the summary fine list under NYSE Rule 476A, the proposed rule change will also advance the objectives of Section 6(b)(6) of the Act⁷ by providing a procedure whereby member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. In addition, the proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7)⁸ and 6(d)(1)⁹ of the Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received written comments on the proposed rule change.

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

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78k-1(a)(1).

⁷ 15 U.S.C. 78f(b)(6).

⁸ 15 U.S.C. 78f(b)(7).

⁹ 15 U.S.C. 78f(d)(1).

³ Securities Exchange Act Release No. 42913 (June 8, 2000); 65 FR 37587 (June 15, 2000).

⁴ Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000); Securities Exchange Act Release No. 42758 (May 5, 2000), 65 FR 30175 (May 10, 2000).

publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the 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 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, D.C. 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 NYSE. All submissions should refer to the File No. SR-NYSE-00-19 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jonathan G. Katz,
Secretary.

[FR Doc. 00-20098 Filed 8-8-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43100; File No. SR-Phlx-00-01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend its Current Enhanced Specialist Participation Provisions and Adopt Two New Programs in Phlx Rule 1014(g); Commission Request for Comment

July 31, 2000.

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 January 31, 2000, 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. On March 17, 2000, the Phlx filed with the Commission Amendment No. 1 to the proposed rule change, and on July 7 and July 18, 2000, the Phlx filed Amendment Nos. 2 and 3, respectively, substantively amending its proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Table of Contents

Commission's Introduction	
I. Statement of the Terms of Substance of the Proposed Rule Change	
II. Statements Concerning the Proposed Rule Change	
A. Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change	
1. Purpose	
a. Current Enhanced Specialist Participation Programs	
(i) Enhanced Specialist Participation of Rule 1014(g)(ii)	
(ii) New Specialist Unit/New Options Enhanced Specialist Participation	
(iii) New Products Enhanced Specialist Participation	
b. Proposed 80% Enhanced Specialist Participation	
(i) Parameters	
(ii) Performance Requirement	
c. Proposed 50% Enhanced Specialist Participation	
d. Wheel Trades	
e. Relationship Among the Various Enhanced Participation Programs	
2. Statutory Basis	
B. Phlx's Statement on Burden on Competition	
C. Comments on the Proposed Rule Change Received by the Phlx from Members, Participants, or Others	
III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action	
IV. Commission's Solicitation of Comments	
A. Background	
B. Price Discovery on the Options Markets	
1. The General Rules: Priority and Parity	
2. Exceptions to the Rule	
a. Specialist Guarantees	
b. Guarantees to Upstairs Firms: Facilitation and Customer Crosses	
c. Automatic Execution Allocations	
C. Special Guarantees as an Exchange's Competitive Strategy	
1. Offering Internalization Opportunities	

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The substance of these amendments has been incorporated in the description of the proposal below.

- 2. Payment for Order Flow and Preferencing
- D. Specialist Guarantees and Exchange Act Requirements
- E. The Phlx Proposal
- Exhibit A. Text of Proposed Rule Change

Commission's Introduction

The Commission has serious concerns as to whether the proposed rule change is consistent with the Act and the rules and regulations thereunder. Accordingly, it is considering whether to approve the proposed rule change or to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁴ to determine whether the proposed rule change should be disapproved. In Section IV below, the Commission elaborates on the nature of its concerns, and asks for comment on them.

I. Statement of the Terms of Substance of the Proposed Rule Change⁵

The Phlx is proposing to amend its current enhanced specialist participation provisions as codified in Phlx Rule 1014(g), primarily by adopting two new programs that would entitle a specialist to a higher participation in "Top 100 Options."⁶ These programs would:

- Entitle a specialist on parity to an enhanced participation of 80% in Top 100 Options allocated to a Phlx specialist after January 1, 1997. This 80% Enhanced Participation would be effective for a six month pilot period.
- Entitle a specialist on parity to an enhanced participation of 50% in Top 100 Options allocated to a Phlx specialist before January 1, 1997.

The proposal would establish a "Performance Requirement" for specialists entitled to the 80% participation. If an average of 10% of the daily consolidated Options Clearing Corporation ("OCC") volume in a particular specialist's option is not transacted on the Phlx over a six-month period, an Exchange committee would be authorized to reallocate the option.

The proposal would also modify the manner in which orders executed through AUTO-X, the Phlx's automatic execution system, are allocated, specifically with regard to the application of enhanced specialist participations to AUTO-X trades.

The full text of the proposed rule change appears as Exhibit A appended

⁴ 15 U.S.C. 78s(b)(2)(B).

⁵ The Phlx proposal has been condensed and edited for clarity, with some changes based on a series of telephone conversations with the Exchange, the most substantive of which are annotated below.

⁶ As defined below, "Top 100 Options" are those equity options with the highest total year-to-date option volume across all options markets as of the date specified in the proposed rule.

¹⁰ 17 CFR 200.30-3(a)(12).