

longstanding method the Exchange has used to manage quote traffic is "throttling," or capping outbound quote traffic to OPRA. For many years, the Exchange has had in place, within its options trading systems, the ability to internally throttle total outbound message traffic to OPRA by limiting, to a level equal to the Exchange's capacity allocation, the amount of messages sent to OPRA in a given second. This is accomplished by withholding some Auto-Quote generated messages from dissemination each second until the next second. Throttling may result in some quotations being overridden by subsequent quotations. Throttling may, therefore, prevent older quotations-in-waiting from ever being disseminated.

The proposed rule addresses the Exchange's ability to manage the actual number of option quotations being generated by permitting the Chairman or his designee to direct that Auto-Quote be set to update quotations based on a certain minimum movement in the underlying security.

## 2. Statutory Basis

The Phlx believes that the proposed rule change is consistent with Section 6 of the Act<sup>6</sup> in general, and with Section 6(b)(5) of the Act<sup>7</sup> specifically, in that it is designed to perfect the mechanisms of a free and open market and the national market system, and to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden 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 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 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-00-62 and should be submitted by October 5, 2000.

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. 34-43260; File No. SR-Phlx-00-51]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Reporting Structure of the Internal Audit Department**

September 7, 2000.

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 August 24, 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. 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 Exchange proposes to amend its By-Law Article X, Section 10-9, to state that the Exchange's Internal Audit Department will report to the Audit Committee of the Exchange. 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

Currently, pursuant to Phlx By-law Article X, Section 10-9(b), the Internal Audit Department reports to both the Audit Committee and the General Counsel of the Exchange. The purpose of the proposed By-Law amendment is to change the reporting structure of the Internal Audit Department so that it reports only to the Audit Committee, a body composed in such a way that facilitates the exercise of independent judgment in oversight matters relating to the Exchange.<sup>3</sup> The proposed rule change should enhance the independence of the Internal Audit Department<sup>4</sup> and is consistent with the

<sup>3</sup> The Audit Committee consists of three members who are public members of the Exchange's Board. Audit Committee members cannot serve in a management capacity with the Exchange or any affiliate, and must be free of any other relationships that would interfere with the exercise of independent judgment. Phlx By-Law Article X, Section 10-9(a).

<sup>4</sup> See, Standard 100 of *Standards for the Professional Practice of Internal Auditing* (The Institute of Internal Auditors, 1998): "Internal auditors should be independent of the activities they audit."

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<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 240.10b-4.

responsibility of the Audit Committee to review the actions of the Internal Audit Department. The proposed amendment should also conform the reporting structure of the Internal Audit Department to industry practice.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general,<sup>5</sup> and with Section 6(b)(5) in particular,<sup>6</sup> in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by clarifying the reporting structure of the Internal Audit Department.

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

The Exchange 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, Participations or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing proposed rule change is concerned solely with the administration of the Exchange. Therefore, the proposed rule change has become immediately effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(3) thereunder.<sup>8</sup> At any time within 60 days of the filing of such 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 filing will also be available for inspection and copying at the principal office at the Phlx. All submissions should refer to File No. SR-Phlx-00-51 and should be submitted by October 5, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43257; File No. SR-PHLX-00-73]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Reduction in Fees for Off-Floor Traders**

September 6, 2000.

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 August 25, 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. 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 Exchange proposes to amend its schedule of dues, fees and charges to require all current and future off-floor traders to pay an initial registration fee of \$50 and an annual fee thereafter of \$250 for all off-floor traders registered as

of April 1st of each year. These amounts reflect a reduction from \$1,000 for each fee that had previously been approved.

Specifically, the Exchange seeks to require associated persons of member organizations for which the Exchange is Designated Examining Authority ("DEA"), but who are not themselves Exchange members, who engage in proprietary trading of equities and options, including, but not limited to, persons who execute such trades or make trading decisions, to pay a reduced registration fee of \$50 and thereafter a reduced annual fee of \$250. The proposed decreases would apply to those persons who are not Exchange members registered in a trading capacity on the floor of the Exchange. The proposed decreases are to be effective September 1, 2000, with implementation of the annual fee to be April 1, 2001.

#### **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**

The purpose of this proposed rule change is to amend the Exchange's fee schedule to decrease off-floor trader fees to \$250, following a review of the original purpose of such fees as well as their current costs. Off-floor traders are, pursuant to Phlx Rule 604, persons who are currently associated with member organizations for which the Exchange is the DEA, but who are not themselves Exchange members, who engage in proprietary trading of equities or options from off the floor of the Exchange, and who must file a Form U-4 and a fingerprint card as well as provide proof of successful completion of the Uniform Registered Representative Examination, Series 7. At this time, the Exchange charges such traders an initial registration fee of \$1,000 and an annual fee of \$1,000. The payment of the decreased initial

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(3).

<sup>9</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.