

consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq to provide the additional PostDataSM information to all users of PostDataSM immediately. For this reason, the Commission designates the proposal, as amended, to be effective and operative upon filing with the Commission.¹⁵

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 the filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR-NASD-2002-90 and should be submitted by September 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46296; File No. SR-Phlx-2002-37]

Self-Regulatory Organization; Notice of Filings and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a 10-Up AUTO-X Guaranteed Size for Option Orders for the Proprietary Account(s) of Off-Floor Broker-Dealers in the Top 120 Options

August 1, 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 22, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to 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. On July 31, 2002, the Exchange filed Amendment No. 1 to the proposal.³ 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, Commentary .05(iv), to provide that the minimum guaranteed AUTO-X size shall be at least ten contracts for off-floor broker-dealer limit orders in the 120 most actively traded equity options (the "Top 120 Options").⁴ The text of the proposed rule change is set forth below. New text is in *italics*; deletions are in brackets.

Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)

(a)-(j) No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter to John C. Roeser, Special Counsel, Division of Market Regulation, Commission, from Richard S. Rudolph, Director and Counsel, Phlx, dated July 26, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to expand the definition of the Top 120 Options so that any equity option listed on the Exchange, regardless of when such equity option was listed can be considered a Top 120 Option. For purposes of calculating the sixty-day abrogation period, the Commission considers the abrogation period to have begun on July 31, 2002.

⁴ The Exchange has defined a Top 120 Option as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded nationally for a specified month based on volume reflected by The Option Clearing Corporation. See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-Phlx-2000-71). See also Amendment No. 1, *supra* note 3.

Commentary:

.01-.03 No change.

.04 Reserved.

.05

(1)-(iii) No change.

(iv) (a) *The minimum guaranteed AUTO-X size shall be at least 10 contracts for off-floor broker-dealer limit orders in the 120 most actively traded equity options (the "Top 120 Options"). A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded nationally for a specified month based on volume reflected by The Options Clearing Corporation ("OCC").*

(b) *With respect to all other options. [O]ff-floor broker-dealer limit orders may be eligible for automatic execution via AUTO-X on an issue-by-issue basis, subject to the approval of the Options Committee.*

(c) *The AUTO-X guarantee for off-floor broker-dealer limit orders may be for a different number of contracts, on an issue-by-issue basis, than the AUTO-X guarantee for public customer orders, subject to the approval of the Options Committee.*

(v) 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 place 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 guarantee automatic executions of at least ten contracts in Top 120 Options for orders delivered via AUTOM⁵ from off the floor of the

⁵ 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 certain orders are 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.

¹⁵ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). In addition, for purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on August 1, 2002, the date Nasdaq filed Amendment No. 1.

¹⁶ 17 CFR 200.30-3(a)(12).

Exchange for the proprietary account(s) of off-floor broker-dealers.⁶

Currently, off-floor broker-dealer limit orders may be eligible for automatic execution via AUTO-X on an issue-by-issue basis, subject to the approval of the Options Committee. The instant proposal would require specialists to provide automatic executions of at least ten contracts for eligible orders for the account(s) of off-floor broker-dealers in the Top 120 Options.⁷ Specialists may elect to guarantee a larger size for automatic execution of such orders, up to the maximum size allowable under Exchange rules.⁸ The AUTO-X guarantee for off-floor broker-dealer limit orders may be for a different number of contracts, on an issue-by-issue basis, than the AUTO-X guarantee for public customer orders, subject to the approval of the Options Committee.⁹

The Exchange believes that the instant proposal should enhance competition in the options markets by enabling it to attract and compete for order flow in the Top 120 Options by guaranteeing automatic executions for eligible orders for the proprietary account(s) of off-floor broker-dealers. By requiring the automatic execution of such orders, the Exchange can guarantee order flow providers automatic executions in Top 120 Options for a minimum of ten contracts, thus ensuring that their proprietary orders would be handled automatically and reported expeditiously.

2. Statutory Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with section 6 of the Act¹⁰ in general, and with section 6(b)(5) of the Act¹¹ specifically, in that it is

designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by adding a requirement designed to attract order flow generated for the proprietary accounts of off-floor broker-dealers, thus fostering competition among exchanges for such order flow.

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

The Phlx believes that the proposed rule change does not 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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for thirty days from the date of filing, or such time as the Commission may designate if consistent with the protection of investors and the public interest,¹² the proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative upon filing and has requested that the Commission waive the thirty-day operative period in order that the

Exchange may implement the proposal promptly and in an orderly fashion. The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately.¹⁵ 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 filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2002-37 and should be submitted by September 3, 2002.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

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⁶ In April, 2002, the Commission approved the Exchange's proposal to adopt rules to allow limit orders for the proprietary accounts of off-floor broker-dealers to be delivered through AUTOM and, in certain issues, automatically executed via AUTO-X. See Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR-Phlx-2001-40).

⁷ The initial proposal would have limited the definition of the Top 120 Options to options listed on the Exchange after January 1, 1997. See Amendment No. 1, *supra* note 3.

⁸ The current maximum allowable guaranteed size for automatic execution of eligible orders via AUTO-X is 250 contracts. See Exchange Rule 1080(c).

⁹ See Exchange Rule 1080, Commentary .05(iv).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

¹² The Exchange provided the Commission with notice of its intent to file the proposed rule change more than five days prior to the filing date.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12).