

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47942; File No. SR-PHLX-2003-31]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend the Exchange's Rule 229 To Provide for the Automatic Execution of Odd-Lot Market and Marketable Limit Orders Received Over PACE During Locked and Crossed Markets at the PACE Quote

May 29, 2003.

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 April 23, 2003, 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 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 Exchange proposes to amend Phlx Rule 229,<sup>3</sup> Supplementary Material .08 to modify the Philadelphia Stock Exchange Automated Communication and Execution ("PACE") System<sup>4</sup> to provide for the automated execution of odd-lot market and marketable limit orders received over PACE during locked markets<sup>5</sup> and crossed markets<sup>6</sup> at the PACE Quote.<sup>7</sup> Below is the text of the proposed rule change. Proposed

new text is *italicized* and proposed deleted text is [bracketed].

\* \* \* \* \*

Rule 229 Philadelphia Stock Exchange Automated Communications and Execution System (PACE).

PACE provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions. Orders accepted under the system may be executed on a fully automated or manual basis in accordance with the provisions of this Rule. Securities admitted to dealings on the equity floor are eligible for trading on the PACE System in which equity specialists and member organizations may choose to participate. The conditions under which orders will be accepted and executed are set forth below. When used in the Rule, PRL means a combined round-lot and odd-lot order, and PACE Quote means the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific or Philadelphia Stock Exchange, or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote, as appropriate. The PACE rules, conditions and guidelines do not apply to orders not on the system, and existing rules governing orders not on the system are not affected hereby.

#### Supplementary Material

.01-.07 No change.

.08 Odd-lot market orders entered after the opening will be executed on the PACE [q]Quote. *When the PACE Quote is locked, odd-lot market orders and marketable limit odd-lot orders entered after the opening will be executed at the locked price. If the PACE Quote is crossed, and the bid is higher than the offer by \$ .05 or less, odd-lot market and marketable limit orders will be executed at the mean of the crossed bid and offer. If the mean does not fall at a one-cent increment, the execution will be rounded up to the nearest \$ .01. If a crossed market exists and the bid is higher than the offer by more than \$ .05, then the odd-lot order will not be automatically executed by the PACE system, but will be executed manually at the price of the next unlocked and uncrossed PACE Quote.*

.09-.22 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 change the handling and execution of certain odd-lot orders sent over the PACE System to increase efficiency. At the present time, during a locked and/or crossed market, odd-lot market orders in all securities entered after the opening of trading are not executed automatically, but instead are handled manually by the specialist. The Exchange now proposes to change this by providing for automated handling of these orders. The Exchange believes that this, in turn, would increase the efficiency of order handling, relieving the burden of specialists of dealing with manual orders of less than a round-lot during periods of locked and crossed markets. Furthermore, the Exchange believes that the quality of execution of these orders would be improved and enhanced, because execution time of these orders would be reduced while the orders would still receive the best bid or offer. The Exchange states that the speed of execution is an important aspect of the best execution of orders. In terms of price, the Exchange believes the proposed pricing procedure for odd-lot market orders after the opening when markets are locked or crossed should result in a customer receiving execution prices that accurately reflect market conditions. For instance, an execution at the PACE Quote when it is locked reflects the current market price, notwithstanding that it is locked.

In automating the execution of odd-lot market orders during locked and certain crossed markets, the Exchange determined that such orders should be executed at the PACE Quote, or in the case of crossed market, when the bid is higher than the offer by \$ .05 or less, at the mean of the crossed best bid and offer. If the mean does not fall at a one-cent increment, the execution would be rounded up to the nearest \$ .01. The Exchange states that this simple algorithm may enable the few crossed market orders that are actually received on the Exchange to be automatically executed at a fair execution price. The Exchange has determined that the \$ .05

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange states that its proposed rule change to Phlx Rule 229, Supplementary Material .08 is substantially similar to a pilot filed by the American Stock Exchange, LLC ("Amex") for Amex Rule 118 (Trading in Nasdaq National Market Securities) and Rule 205 (Manner of Executing Odd-Lot Orders). See Securities Exchange Act Release No. 46304 (August 2, 2002), 67 FR 51903 (August 9, 2002).

<sup>4</sup> PACE is the Exchange's automated order routing, delivery, execution and reporting system for equities.

<sup>5</sup> A locked market is when the bid and offer for the security are the same.

<sup>6</sup> A crossed market is when the bid exceeds the offer.

<sup>7</sup> The PACE Quote is the best bid/ask quote among the American Stock Exchange, Boston Stock Exchange, Cincinnati Stock Exchange, Chicago Stock Exchange, New York Stock Exchange, Pacific Stock Exchange or Philadelphia Stock Exchange, or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote, as appropriate.

is a reasonable spread between a crossed market to select a price that reflects current market conditions. In contrast, in crossed markets that exceed the \$.05 parameter, true market conditions are less clear and require manual handling and, perhaps, price discovery, by a trading professional. The Exchange believes that this proposal may even reduce such conditions by executing an incoming marketable order against a locked or crossed bid or offer.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of section 6(b)(5)<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 by providing for automatic execution of certain odd-lot market orders for equities traded over the PACE system, thereby increasing automated handling.

### *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*

Written comments were neither solicited nor received with regard to 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 publishes its reasons for so finding or (ii) as to which the Phlx 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 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-2003-31 and should be submitted by June 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47924; File No. SR-SCCP-2002-06]

### **Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Extension of its Pilot Program to Implement its Existing Fee Schedule for Electronic Communications Networks**

May 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 30, 2002, the Stock Clearing Corporation of Philadelphia ("SCCP") 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 primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change extends SCCP's pilot program for an additional one year period thereby continuing the existing SCCP fee waivers for SCCP participants for trades executed on the Philadelphia Stock Exchange, Inc. ("Phlx") for Electronic Communications Networks ("ECNs").<sup>2</sup> The current pilot program expires on January 23, 2003.<sup>3</sup>

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule**

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>4</sup>

#### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

SCCP previously filed with the Commission a proposed rule change to adopt a fee schedule for ECNs.<sup>5</sup> Pursuant to that proposed rule change, SCCP waived certain dues, fees, and charges, including trade recording fees, value fees, and treasury transaction charges and Nasdaq 100 Trust, Series 1 ("QQQ") charges,<sup>6</sup> but not account fees,

<sup>2</sup> ECN shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or over-the-counter ("OTC") market maker and permits such orders to be executed against in whole or in part except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times or any system operated by or on behalf of an OTC market maker or exchange market maker that executes customer orders primarily against the account of such market maker as principal other than riskless principal.

<sup>3</sup> Exchange Release No. 45533 (March 11, 2002), 67 FR 11739 (March 15, 2002) (SR-SCCP-2002-02).

<sup>4</sup> The Commission has modified parts of these statements.

<sup>5</sup> Securities Exchange Act Release No. 45145 (December 10, 2001), 66 FR 65017 (December 17, 2001) (SR-SCCP-2001-01).

<sup>6</sup> The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq® The Nasdaq Stock Market®, Nasdaq 100 Shares™, Nasdaq-100 Trust™, Nasdaq-100 Index Tracking Stock™ and QQQ™ are trademarks or

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).