

AUTOM, and Exchange Rule 1080(b)(i)(C) currently lists the various types of off-floor broker-dealers that may be delivered via AUTOM. Currently, neither of these rules allows the delivery of IOC orders via AUTOM. The instant proposal would provide that both agency and off-floor broker dealer IOC orders may be delivered via AUTOM.

The Exchange believes that the addition of this new AUTOM eligible order type should enable the Exchange to better compete for customer and broker-dealer order flow by attracting orders which, if not immediately executed, would be cancelled. Investors would have full, immediate information as to the status of such orders, and would be able to respond immediately to reports (either executions or cancellations) stemming from the delivery of such orders. Particularly in times of high market volatility, such information can be critical to customers and broker-dealers who need to make decisions swiftly in response to such reports. The Exchange believes that this new AUTOM eligible order type should facilitate customers and broker-dealers in making such decisions.

The Exchange expects to deploy the systems necessary for the acceptance of IOC orders via AUTOM by April 25, 2003.

Increase in Off-Floor Broker-Dealer Order Delivery Size. As stated above, the Exchange's Options Committee has determined to increase the eligible AUTOM delivery size of off-floor broker-dealer orders from 200 contracts to 1,000 contracts for all issues.¹¹ The proposed rule change would amend Rule 1080(b)(i)(C) to reflect this determination, and would provide that the Options Committee may determine, on an issue-by-issue basis, to increase the eligible order delivery size to an amount greater than 1,000 contracts. The purpose of this provision is to make the Exchange's rules consistent with current practices.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,¹² in general, and section

6(b)(5),¹³ in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by: (1) Allowing customers and broker-dealers to deliver IOC orders via AUTOM, which should enable the Exchange to better compete for customer and broker-dealer order flow and enable investors to have immediate information as to the status of IOC orders delivered via AUTOM; and (2) making the Exchange's rules regarding the AUTOM order delivery size for off-floor broker-dealer orders consistent with current practices.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6)¹⁵ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designated if such action is consistent with the protection of investors and the public interest. The Phlx has requested, so that the Exchange may remain competitive with other exchanges that have similar rules in effect, that the Commission accelerate

the implementation of the proposed rule change so that it may take effect prior to the 30 days specified in Rule 19b-4(f)(6)(iii).¹⁷ The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will permit the Exchange to immediately begin accepting Immediate or Cancel orders from customers and broker-dealers through AUTOM, and, with respect to the increase in the eligible AUTOM order delivery size for off-floor broker-dealer orders, will provide better notice to the public of the Exchange's practices. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁸

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 of the Phlx. All submissions should refer to File No. SR-Phlx-2003-11 and should be submitted by April 16, 2003.

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ 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).

Exchange Act Releases Nos. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2002) (SR-Phlx-2002-04); and 40970 (January 25, 1999), 64 FR 4922 (February 1, 1999) (SR-Phlx-98-44).

¹¹ Currently, Exchange Rule 1080(b)(i)(C) provides that generally, orders up to 200 contracts, depending on the option, are eligible for AUTOM order delivery on an issue-by-issue basis, subject to the approval of the Options Committee, and that the Options Committee may determine to increase the eligible order delivery size to an amount greater than 200 contracts, on an issue-by-issue basis.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ *Id.*