

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

1. Purpose

Phlx represents that the purpose of the proposed rule change is to raise revenue for the Exchange by charging Exchange members for transactions involving inbound P Orders sent by such members via the Linkage pursuant to the Plan.¹²

The Exchange will charge Exchange members for P Orders sent to the Exchange over the Linkage from the floor of another exchange \$.35 per contract executed.¹³ The Exchange will not charge fees for other types of Linkage Orders.¹⁴

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act¹⁵ in general, and furthers the objectives of section 6(b)(4) of the Act¹⁶ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members who avail themselves of the Linkage, consistent with other fees charged by the Exchange for non-Linkage Orders.¹⁷

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, 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 Phlx consents, the Commission shall:

(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, 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 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-2003-16 and should be submitted by April 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47582; File No. SR-PHLX-2002-18]

Self Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Make Permanent a PACE Automatic Price Improvement Pilot Program and a PACE Order Execution and Price Protection Pilot Program

March 27, 2003.

On March 11, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² a proposed rule change to make permanent two Philadelphia Stock Exchange Automated Communication and Execution System ("PACE") pilot programs that were introduced with the advent of decimal pricing in the securities industry. The first pilot program consists of an automated price improvement feature that incorporates a percentage of the spread between the bid and the offer, and has been in effect since January 30, 2001.³ The second pilot program incorporates immediate execution of certain market orders through the Public Order Exposure System ("POES") and mandatory double-up/double-down price protection, and has been in effect since August 25, 2000.⁴

The proposed rule change was published for comment in the **Federal Register** on March 22, 2002.⁵ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁶ and, in particular, the requirements of section 6 of the Act⁷ and the rules and regulations thereunder. The Commission finds

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001) (SR-Phlx-2001-12).

⁴ See Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000) (SR-Phlx-2000-08).

⁵ See Securities Exchange Act Release No. 45580 (March 18, 2002), 67 FR 13399.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f.

¹² Under the Plan and Exchange Rule 1083(k), which tracks the language of the Plan, a "Linkage Order" means an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

(i) "Principal Acting as Agent ("P/A") Order," which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) "Principal ("P") Order," which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and

(iii) "Satisfaction Order," which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

The Exchange will not assess any charges for P/A Orders and Satisfaction Orders.

¹³ Currently, for non-Linkage off-floor broker-dealer orders sent via the Philadelphia Stock Exchange Automated Options Market ("AUTOM"), which is the Exchange's electronic order delivery, routing, execution and reporting system, the Exchange charges \$.35 per contract to the sending off-floor broker-dealer for non-AUTO-X trades, and \$.45 per contract for trades executed by AUTO-X, the automatic execution feature of AUTOM.

¹⁴ See *supra* note 6.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ See *supra* note 7.

¹⁸ 17 CFR 200.30-3(a)(12).