

exception to the ITS Plan's trade-through rule.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities exchange.⁶ Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,⁷ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with person engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The Commission also finds good cause to approve the proposed rule change before the 30th day after the date of publication of notice in the **Federal Register**. The Commission believes that the proposed change to PCXE rule 7.37 is consistent with the terms and spirit of the *de minimis* exemption from the trade-through restrictions of the ITS Plan, and will allow market participants to further benefit from this exemption. The Commission believes that the proposed IOC Cross and PNP Cross order types will promote an efficient and effective market operation and will offer investors additional choices in the handling of their orders. Accelerated approval of the proposal will make the proposed order types available to investors more quickly and without undue delay. Accordingly, the Commission finds it appropriate to approve the proposed rule change before the 30th day after the date of publication in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-PCX-2002-74) is hereby approved and shall become effective immediately.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47166; File No. SR-Phlx-2002-61]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. To Amend Options Floor Procedure Advice A-13 To Include Violations for Failure To Obtain Approval To Disengage the NBBO Feature in the Exchange's Minor Rule Plan

January 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 4, 2002, 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. On November 7, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Phlx proposes to amend Phlx Option Floor Procedure Advice ("OFPA") A-13, Auto Execution Engagement/Disengagement Responsibility, to include violations for failure to obtain the necessary approvals prior to disengagement of the Exchange's NBBO Step-Up Feature. The text of the proposed rule change is set forth below. Proposed new text is italicized; deleted language is in brackets.

A-13 Auto Execution Engagement/Disengagement Responsibility (EQUITY OPTION AND INDEX OPTION ONLY)

(a) It is the responsibility of the option Specialist to engage the Auto Execution (Auto-X) system for an assigned option within three (3) minutes of completing the opening or reopening rotation of that option.

Where extraordinary circumstances occur, a Specialist may be provided an

exemption from receiving orders through Auto-X and may then disengage the system upon approval by two Floor Officials. Five minutes subsequent to the disengagement of AUTO-X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO-X is disengaged), the requesting Specialist [of] or his/her designee, two Floor Officials, and a designated surveillance staff person, shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO-X will be re-engaged with either: (i) Specialist [of] or his/her designee determines that the conditions supporting the extraordinary circumstances no longer exist, at which time the Specialist or his/her designee shall inform the Market Surveillance staff that the extraordinary circumstances no longer exist and that the Specialist is re-engaging AUTO-X; or (ii) when two Floor Officials and the designated surveillance staff person determine that the conditions supporting the extraordinary circumstances no longer exist. In the event extraordinary circumstances exist floor-wide, two Exchange Floor Officials and the Chairperson of the Options Committee or his/or her designee may determine to disengage the AUTO-X feature floor-wide. Five minutes subsequent to a floor-wide disengagement of AUTO-X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO-X is disengaged), two Floor Officials, the Chairperson of the Options Committee or his/her designee and a designated Market Surveillance staff person shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO-X will be re-engaged when either[;]: (1) the Specialist determines that the conditions supporting the extraordinary circumstances no longer exist for their particular class of options at which time the Specialist or his/her designee will inform Market Surveillance staff that the extraordinary circumstances no longer exist for their particular class of options and that the Specialist is re-engaging AUTO-X; or (2) when two Floor Officials, the Chairperson of the Options Committee or his/her designee and the designated Market Surveillance staff person determine that the extraordinary circumstances no longer exist. The NBBO feature is always disengaged when AUTO-X is disengaged.

Extraordinary circumstances include market occurrences and system malfunctions that impact a Specialist's ability to accurately price and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Rick Rudolph, Director and Counsel, Phlx, to Jennifer Lewis, Commission, dated November 6, 2002 ("Amendment No. 1"). In Amendment No. 1, Phlx fixed nonsubstantive typographical errors in its rule text, and added a cross-reference to Phlx Rule 960.2 in the purpose section of its proposal.