

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 NYSE. All submissions should refer to File No. SR-NYSE-2003-19 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47977; File No. SR-Phlx-2003-37]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Delete the Prohibition Against the Delivery of Electronically Generated Orders Via AUTOM

June 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on May 19, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 delete Phlx Rule 1080(i), which prohibits the delivery of electronically generated orders delivered via AUTOM.<sup>3</sup> The text

of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

#### 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 enable the Exchange to compete for order flow by allowing electronically generated orders to be delivered via AUTOM.

In September 2000, the Exchange adopted Phlx Rule 1080(i), which restricts the entry of certain options orders that are created and communicated electronically, without manual input, into AUTOM.<sup>4</sup> At the time, the Exchange represented that allowing electronically generated and communicated customer orders to be routed directly to AUTOM and AUTO-X would give customers with such electronic systems a significant advantage over Exchange specialists and Registered Options Traders ("ROT's"), who are responsible for the maintenance of fair and orderly markets on the Exchange, and who provide liquidity on the Exchange.

Since the time the Exchange adopted Phlx Rule 1080(i), the Exchange has modified its AUTOM and AUTO-X system in several significant respects. For example, in September and October 2002, the Exchange incorporated a new software program into its Auto-Quote<sup>5</sup>

system that enables the Exchange to disseminate a firm quotation size of at least the sum of limit orders at the Exchange's disseminated price.<sup>6</sup> The Exchange has also expanded the eligible order types<sup>7</sup> and delivery sizes<sup>8</sup> eligible for AUTOM delivery and automatic execution via AUTO-X.

Based on the significant changes to the Exchange's AUTOM System since the time the Exchange adopted Phlx Rule 1080(i), the Exchange believes that it has developed systems that have narrowed the gap with respect to any actual or perceived advantage an off-floor customer or broker-dealer could have over a specialist or ROT in sending electronically generated orders to the Exchange via AUTOM. The Exchange represents that it will continue to surveil for, and enforce, compliance with other rules that help specialists and ROTs in managing their risk while making markets on the Exchange.<sup>9</sup>

automatically monitor and instantly update quotations. Specialists may submit their own quotations by establishing a specialized connection by-passing the Exchange's Auto-Quote system, which is known as a Specialized Quote Feed ("SQF").

<sup>6</sup> See Securities Exchange Act Release No. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002), (SR-Phlx-2002-15).

<sup>7</sup> In October 2002, the Commission permanently approved an Exchange pilot that allowed orders for the account(s) of broker-dealers to be delivered via AUTOM, and to be eligible for automatic execution via AUTO-X. See Securities Exchange Act Release No. 46660 (October 15, 2002), 67 FR 64951 (October 22, 2002) (SR-Phlx-2002-50). The Exchange then adopted rules providing for automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum eligible size range to be determined by the specialist, on an issue-by-issue basis. See Securities Exchange Act Release No. 46886 (November 22, 2002), 67 FR 72015 (December 3, 2002) (SR-Phlx-2002-39). Most recently, the Exchange adopted rules providing an equal firm quotation size and equal AUTO-X guaranteed size for both customer and broker-dealer orders. See Securities Exchange Act Release No. 47646 (April 8, 2003), 68 FR 17976 (April 14, 2003) (SR-Phlx-2003-18).

<sup>8</sup> In March 2003, the Exchange adopted rules to increase the eligible AUTOM order delivery size for off-floor broker dealer orders from 200 contracts to 1,000 contracts for all options. At the same time, the Exchange determined to allow the delivery Immediate or Cancel orders via AUTOM. See Securities Exchange Act Release No. 47543 (March 20, 2003), 68 FR 14737 (March 26, 2003) (SR-Phlx-2003-11).

<sup>9</sup> For example, the Exchange will continue to surveil for, and enforce, compliance with Phlx Rule 1080(c)(ii), which sets forth the obligations of an Exchange Order Entry Firm, defined as a member organization of the Exchange that is able to route orders to AUTOM, and a User, defined as any person or firm that obtains access to AUTO-X through an Order Entry Firm. Specifically, the rule requires Order Entry Firms to comply with all applicable Exchange options trading rules and procedures; provide written notice to all Users regarding the proper use of AUTO-X; and neither enter nor permit the entry of multiple orders in call options and/or put options in the same option issue within any 15-second period for an account or accounts of the same beneficial owner.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> AUTOM is the Exchange's electronic option order delivery, routing, execution 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.

<sup>4</sup> See Securities Exchange Act Release No. 43376 (September 28, 2000), 65 FR 59488 (October 5, 2000) (SR-Phlx-00-79).

<sup>5</sup> Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to