

requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC-2003-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48472; File No. SR-PHLX-2002-86]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendments No. 1, 2, and 3 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 4 and 5 Thereto Relating to the Automatic Execution of Booked Customer Limit Orders

September 10, 2003.

On December 20, 2002, the Philadelphia Stock Exchange ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), 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 relating to automatic execution of booked customer limited orders. On February 27, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.³ On March 28, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ On April 9, 2003, the Exchange filed Amendment No. 3 to the proposed rule change.⁵ The

proposed rule change, as modified by Amendments No. 1, 2, and 3, was published in the **Federal Register** on April 16, 2003.⁶ The Commission received one comment letter with respect to the proposal.⁷ The Exchange submitted a letter in response to ISE Letter on May 20, 2003.⁸ On July 9, 2003 and August 15, 2003, the Exchange submitted Amendments No. 4⁹ and 5¹⁰ to the proposed rule change, respectively. This order approves the proposed rule change and Amendments No. 1, 2, and 3, accelerates approval of Amendments No. 4 and 5, and solicits comments from interested persons on Amendments No. 4 and 5.

I. Description of the Proposed Rule Change

The PHLX proposes to amend PHLX Rule 1080, Philadelphia Stock Exchange Automated Options Market ("AUTOM") and Automatic Execution System ("AUTO-X"),¹¹ to provide for the automatic execution of eligible inbound customer and off-floor broker-dealer

limit orders¹² against booked customer limit orders at the Exchange's disseminated price. Specifically, the Exchange is proposing to amend PHLX Rule 1080(g) to reflect that the contra-side of an eligible inbound customer or off-floor broker-dealer limit order executed via AUTO-X may be a booked customer limit order.

The purpose of the proposal is to increase automated options order handling by enabling the Exchange to automatically execute eligible inbound customer and off-floor broker-dealer limit orders delivered via AUTOM against customer limit orders on the specialist's limit order book.¹³ The proposal represents the first phase ("Phase I") of the Exchange's "Book Match" system, which the Exchange anticipates will eventually automatically match all eligible inbound order types against orders resting on the limit order book ("booked limit orders").¹⁴

Currently, the Exchange's AUTOM System and its automatic execution feature, AUTO-X, do not automatically execute otherwise eligible inbound orders if all or part of the Exchange's disseminated size at the disseminated

Assistant Director, Division, Commission, dated April 9, 2003 ("Amendment No. 3"). In Amendment No. 3, the PHLX incorporates changes to the text of the PHLX Rule 1080 that have been made in separate proposed rule change filings since the time the current proposed rule change was submitted.

⁶ See Securities Exchange Act Release No. 47657 (April 10, 2003), 68 FR 18717.

⁷ See Letter from Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc. ("ISE") to Jonathan G. Katz, Secretary, Commission, dated May 7, 2003 ("ISE Letter").

⁸ See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Jonathan G. Katz, Secretary, Commission, dated May 20, 2003 ("PHLX Letter").

⁹ See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated July 8, 2003 ("Amendment No. 4"). In Amendment No. 4, the Exchange propose to adopt new rule texts to clarify the scope of the application of the exposure requirement, and provides clarifying language to the proposal relating to the definition of the term "off-floor broker-dealers" and the internalization of orders delivered to the Exchange.

¹⁰ See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated August 15, 2003 ("Amendment No. 5"). In Amendment No. 5, the Exchange proposes deleting the 10-second timer provision and implementing Book Match, on an issue-by-issue basis, no later than October 1, 2003.

¹¹ AUTOM is the Exchange's electronic 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. See PHLX Rule 1080.

¹² In April of 2002, the Commission approved, on a six-month pilot basis, the Exchange's proposal to allow off-floor broker-dealers to submit proprietary limit orders directly onto the limit order book via AUTOM (the "pilot"). See Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR-PHLX-2001-40). In the pilot, the Exchange defined "off-floor broker-dealer" as (a) a broker-dealer that delivers orders from "upstairs" for the proprietary account(s) of such broker-dealer, or (b) a market maker located on an exchange or trading floor other than the Exchange's trading floor who elects to deliver orders via AUTOM for the proprietary account(s) of such broker-dealer. The Commission approved the pilot on a permanent basis in October 2002. See Securities Exchange Act Release No. 46660 (October 15, 2002), 67 FR 64951 (October 22, 2002) (SR-PHLX-2002-50).

¹³ The electronic "limit order book" is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. See PHLX Rule 1080, Commentary .02.

¹⁴ The Exchange notes that it was required by the Commission to commit to the automatic execution of eligible inbound orders against specialist and Registered Options Trader ("ROT") limit orders entered onto the limit order book through an electronic interface system known as "ROT Access" under the *Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions*. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File 3-10282 (the "Order"). See also Securities Exchange Act Release No. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2002) (SR-PHLX-2002-04). The Exchange has committed to roll out the system for the automatic execution of orders placed on the limit order book through ROT Access beginning in January 2004. The instant proposal represents the first phase in the eventual rollout of that system.

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 26, 2003 ("Amendment No. 1"). In Amendment No. 1, the PHLX replaces in its entirety the original proposed rule change.

⁴ See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated March 27, 2003 ("Amendment No. 2"). In Amendment No. 2, the PHLX replaces in its entirety Amendment No. 1.

⁵ See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn,