

Commentary: No change.

## 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 Exchange 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 Exchange 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 proposal is to increase automated options order handling by enabling the Exchange to automatically execute eligible inbound orders during a locked market (*i.e.*, 2 bid, 2 offer).<sup>7</sup>

Currently, Exchange Rule 1080(c)(iv)(A) provides that inbound orders otherwise eligible for automatic execution via AUTO-X will instead be manually handled by the specialist when the Exchange's disseminated market is crossed (*i.e.*, 2 $\frac{1}{8}$  bid, 2 offer) or locked, or crosses or locks the disseminated market of another options exchange.<sup>8</sup> The proposal would amend

Exchange Rule 1080(c)(iv)(A) to delete references to locked markets, such that all inbound orders that are otherwise eligible for automatic execution via AUTO-X would be automatically executed during locked markets. The Exchange believes that this should provide for the automatic execution of a greater number of eligible inbound orders than under the current rules. Orders received during crossed markets would continue to be handled manually by the specialist.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirement under section 6(b)(5) of the Act<sup>9</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest by providing automatic executions for eligible orders during locked markets, which should result in a greater number of automatic executions for orders on the Exchange.

### 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 proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> At any time within

Settlement Order"). Pursuant to the Settlement Order, the Exchange adopted Rule 1080(c)(iv) to codify situations in which orders are handled manually. At this time, the Exchange is proposing to automatically execute eligible inbound orders in one particular situation (*i.e.*, during locked markets) that currently involves manual handling.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

60 days of the filing of the 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 Exchange Act.

A proposed rule change filed under Rule 19b-4(f)(6) normally must not become operative prior to 30 days after the date of the filing. In addition, a self-regulatory organization filing a proposed rule change under Rule 19b-4(f)(6)(iii) normally must give the Commission written notice of its intent to file the proposed rule change five days prior to the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive both the five-day pre-filing requirement and designate that the proposed rule change become operative immediately to allow automatic execution of eligible orders during locked markets.

The Commission believes it is consistent with the protection of investors and the public interest to waive the five-day pre-filing requirement and designate the proposal immediately operative.<sup>12</sup> Accelerating the operative date and waiving the pre-filing requirement should permit the Exchange to provide for a greater number of eligible inbound orders to be automatically executed during locked markets. The proposed rule change should help provide faster execution of certain eligible orders, while reducing the burden on the Exchange's specialists with respect to manual execution of these orders during locked markets. The proposal should benefit customers using the Auto-X system, as well as customers whose orders are residing in the Exchange's book during locked markets because more orders should be more timely executed during locked markets.

Furthermore, the Commission notes that Phlx's proposal is similar to proposed rule changes that were approved previously by the Commission.<sup>13</sup> Thus, the proposed rule

<sup>12</sup> 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).

<sup>13</sup> See Securities Exchange Release Nos. 42167 (November 22, 1999), 64 FR 66954 (November 30, 1999) (order approving CBOE Rule 6.8, Interpretation and Policy .02(b)(iv)); and 45032 (November 6, 2001), 66 FR 57145 (November 14, 2001) (order relating to PCX's Automatic Execution System). Pursuant to telephone conversation

<sup>7</sup> The Exchange notes that it has previously filed to allow for the automatic execution of eligible inbound customer orders during a locked market. See File No. SR-Phlx-2002-86. Because other proposed rule changes included in that filing remain under discussion between Exchange staff and Commission staff as of the filing date of the instant proposal, the Exchange is submitting the instant proposed rule change in order to expedite the automatic execution of eligible orders during locked markets. Upon the completion of discussions with Commission staff, the Exchange intends to amend File No. SR-Phlx-2002-86 to, *inter alia*, delete from that proposal those provisions that are included in the instant proposal.

<sup>8</sup> Under the *Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions*, the Exchange (and the other respondent exchanges, the American Stock Exchange LLC, the Chicago Board Options Exchange, and the Pacific Exchange, Inc.) were required to adopt new, or amend existing, rules concerning automatic quotation and execution systems which specify the circumstances, if any, under which automated execution systems be disengaged or operated in any manner other than the normal manner set forth in the Exchange's rules and require the documentation of the reasons for each decision to disengage an automatic execution system or operate it in any manner other than the normal manner. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File 3-10282 (the "