

• At the end of the day, DTC would automatically transfer the securities from a “pledged to bank” field in the special OCC account to a “pledged to bank” field in the clearing member’s DTC account, leaving the clearing member in the same position as if it had been able to pledge the securities to the bank without OCC’s intermediation.

Upon allowing securities to be withdrawn and pledged under the program, OCC would reduce its margin requirement in the account from which the securities were withdrawn by an amount equal to the value assigned to the securities for margin purposes. The account would, however, be required to be fully margined the next morning.

Initially, clearing members will be permitted to withdraw and pledge securities held by OCC as margin only on settlement dates for exercises of expiring equity options. OCC may at a future date decide to make it available on other exercise settlement dates as well.

3. Timing

Historically, the heaviest volume of option expirations, and hence exercises, occurs in January. In January 2000, 26,099,346 option contracts expired, accounting for 41.9% of total open interest. Open interest as of November 21, 2000, included 26,378,070 contracts expiring in January 2001 (43.2% of total open interest). OCC believes that it is important to have the new program in place in time for the January 2001 expiration to help relieve potential strains on liquidity resulting from the large volume of exercise activity expected to occur at that time.

The proposed rule change is consistent with the requirements of section 17A of the Act¹⁰ and the rules and regulations thereunder applicable to OCC because it would reduce inefficiencies in the exercise settlement process and relieve strains on clearing members’ liquidity in heavy expiration months thereby promoting the safeguarding of securities and funds.

(B) Self-Regulatory Organization’s Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect

to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 the self-regulatory organization consents, the Commission will:

(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 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 Section 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-00-12 and should be submitted by January 18, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-33120 Filed 12-27-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43757; File No. SR-Phlx-00-13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, as Amended, by the Philadelphia Stock Exchange, Inc. Relating to Timing Guidelines for Application in Disciplinary Hearings

December 20, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 13, 2000, 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 Exchange. On August 23, 2000, the Phlx filed Amendment No. 1 to the proposed rule change.³ On November 9, 2000, the Phlx filed Amendment No. 2 to the proposed rule change.⁴ On November 22, 2000, the Phlx filed Amendment No. 3 to the proposed rule change.⁵ On December 13, 2000, the Phlx filed Amendment No. 4 to the proposed rule change.⁶ The Commission is publishing this notice to solicit comments on the proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Charles Falgie, Director of Enforcement/Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission (Aug. 22, 2000) (“Amendment No. 1”). In Amendment No. 1, the Phlx corrected its rule language and clarified which language of the rule text was to be added and deleted. The Phlx also added a paragraph describing that the proposed would allow the Chairperson of the Business Conduct Committee (“Committee”) to designate another person to oversee the Chairperson’s duties pursuant to Phlx rules.

The Phlx indicated that the designee would be a Business Conduct Committee member. Telephone conversation between Charles Falgie, Director of Enforcement/Counsel, Phlx, and Melinda Diller, Attorney, Division, Commission (Sept. 1, 2000).

⁴ See Letter from Charles Falgie, Director of Enforcement/Counsel, Phlx, to Nancy Sanow, Assistant Director, Commission (Nov. 8, 2000) (“Amendment No. 2”). In Amendment No. 2, the Phlx changed the text of the rule language and revised time limits and the manner in which a Respondent’s request for a hearing is handled.

⁵ See Letter from Charles Falgie, Director of Enforcement/Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission (Nov. 20, 2000) (“Amendment No. 3”). In rule change,⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

⁶ See Letter from Charles Falgie, Director of Enforcement/Counsel, Phlx, to Nancy Sanow, Assistant Director Division, Commission (Dec. 13, 2000) (“Amendment No. 4”). In Amendment No. 4, the Phlx made a few technical corrections to the text of the proposed rule.

¹⁰ 15 U.S.C. 78q-1.

¹¹ 17 CFR 200.30-3(a)(12).

change, as amended, from interested persons.

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

The Phlx proposes to amend Phlx Rule 960.5(a), (b), (c), and (d) to provide timing guidelines for certain procedures conducted pursuant to Phlx Rule 960.5. Revised Rule 960.5 proposes to adopt a timing guideline of 120 days after the filing of a written Answer by a Respondent to a Statement of Charges, within which time a hearing is requested, for the scheduling of a hearing date.⁷ Also proposed is a five business day timing guideline⁸ for the Chair of the Committee, or its designee, after receiving a request from Counsel for the Exchange, to schedule a hearing date and name a Hearing Panel. Further, it is proposed that, should the request for a hearing come from the Respondent, Counsel for the Exchange must request that a hearing date be set and a Hearing Panel be named within ten business days of receiving Respondent's request.⁹ An exchange of evidence and witness lists between the parties, as well as providing same to the members of the Hearing Panel, is to be completed not less than eight business days prior to the scheduled hearing date.¹⁰ The proposed amendments require that a transcript of the hearing be provided to the Hearing Panel members and the Respondent within five business days of receipt of the transcript by Counsel for the Exchange. The Respondent, along with being provided a copy of the transcript, will be issued a bill for its portion of the costs of the transcript.¹¹ The costs of the transcript, and producing copies, will be borne equally by the Exchange and by Respondent.¹² The Hearing Panel, upon receipt of the transcript, would then have forty-five days to produce a

hearing report.¹³ Finally, the proposed amendments establish formal procedures for the requesting and granting of adjournments of the hearing date. Such requests are to be presented in writing to the presiding person of the Hearing Panel, and will be considered for just cause.¹⁴

The proposed amendments also allow the Chair of the Committee to name a designee.¹⁵ This is proposed for administrative purposes, such as the Chair's unavailability due to illness, the need for recusal, or other circumstances which may arise.

Below is the text of the proposed rule change. Proposed new language is *italicized*, and proposed deletions are in brackets.

Rule 960.5. Hearing

(a) Participants and Selection of Hearing Panels.

1. *Request for a Hearing*—A hearing on the Statement of Charges shall, at the request of Respondent in his answer, or upon motion of the Business Conduct Committee, be held before a Hearing Panel composed of three persons to be appointed by the Chairman of the Business Conduct Committee or *their designee*. *Should the hearing be at the request of the Respondent, counsel for the Exchange must provide notice to the Chairman of the Business Conduct Committee or their designee which requests the naming of a hearing panel within 10 business days of receiving Respondents request for a hearing.*

2. *Selection of Hearing Panel*—*The Chairman of the Business Conduct Committee or their designee shall name a Hearing Panel within 5 business days of either (i) receipt of notice from counsel for the Exchange which requests the naming of a Hearing Panel, or (ii) upon motion of the Business Conduct Committee for naming of a Hearing Panel. The Chairman of the Business Conduct Committee or their designee shall then promptly notify counsel for the Exchange and Respondent of the names of the members of the Hearing Panel. The presiding person of each Hearing Panel shall be a member of the Business Conduct Committee. The other two persons on the Hearing Panel shall be members of the Exchange, or general partners or officers of member organizations, or such other persons whom the Chairman of the Business Conduct Committee or their designee*

considers to be qualified. The Chairman of the Business Conduct Committee or *their designee* shall select these two other persons from those persons who shall have been designated by the Chairman of the Board of Governors to serve on such hearing panels. In making such selections the Chairman or *their designee* shall, to the extent practicable, choose individuals whose background, experience and training qualify them to consider and make determinations regarding the subject matter to be presented to the Hearing Panel. He shall also consider such factors as the availability of individual hearing officers, the extent of their prior service on Hearing Panels and any relationship between such persons and a respondent which might make it inappropriate for such person to serve on the Hearing Panel.

3. *Notice*—Promptly after the selection of the panelists, the Chairman of the *Business Conduct Committee or their designee* shall cause written notice thereof to be given to the accused. If any person involved in the disciplinary proceeding shall have knowledge of a relationship between himself and any person selected for service on the hearing Panel which might result in such panelist being unable to render a fair and impartial decision, he shall give prompt written notice thereof to the Chairman of the *Business Conduct Committee or their designee*, specifying the nature of such relationship and the grounds for contesting the qualification of such person to serve on the Hearing Panel. The decision of the Chairman of the Committee or *their designee* shall be final and conclusive with respect to the qualification of any person to serve on the Hearing Panel.

(b) Notice of Hearing and Pre-Hearing Procedures.

1. *Scheduling of a Hearing Date*—*A hearing on the Statement of Charges shall be scheduled for no later than 120 days after the filing of a written Answer by the Respondent wherein a hearing is requested. Should the hearing be at the request of the Respondent, counsel for the Exchange must provide notice to the Chairman of the Business Conduct Committee or their designee which requests the setting of a hearing date within 10 business days of receiving Respondents request for a hearing. The request for a hearing date shall be made in writing to the Chairman of the Business Conduct Committee or their designee by (i) counsel for the Exchange, or (ii) on the motion of the Business Conduct Committee.*

2. *Notice*—The Respondent shall be given at least 15 business days notice of the time and place of the hearing.

⁷ See also Chicago Board Options Exchange, Rule 17.8. Offers of Settlement, Interpretations and Policies .02 (discussing a similar timing guideline for scheduling a hearing date).

⁸ See Amendment No. 2, *supra* note 4; see also Amendment No. 3, *supra* note 5. The Phlx confirmed that Amendment No. 3 incorrectly indicates that the time periods for filing the hearing date and for providing a transcript of the hearing to the Hearing Panel members and the Respondent was initially ten days and later amended to five days. However, these time periods have, and will remain, five days throughout the filing. Telephone conversation between Charles Falgie, Director of Enforcement/Counsel, Phlx, and Sapna C. Panel, Law Clerk, Division, Commission (Nov. 27, 2000).

⁹ See Amendment No. 2, *supra* note 4; see also Amendment No. 3, *supra* note 5.

¹⁰ See also Cincinnati Stock Exchange, Rule 8.6. Hearings, Sub-Paragraph (b) Notice and List of Documents (discussing a similar time frame for parties to exchange evidence and witness lists).

¹¹ See Amendment No. 1, *supra* note 3.

¹² See Amendment No. 1, *supra* note 3.

¹³ See also Pacific Exchange, Rule 10.7. Decision (discussing a similar time frame after receipt of the transcript in which to produce a report); see also Amendment No. 2, *supra* note 4; see also Amendment No. 3, *supra* note 5.

¹⁴ See Amendment No. 1, *supra* note 3.

¹⁵ See Amendment No. 1, *supra* note 3.

3. *Requests for Adjournments*—A request for an adjournment of the hearing date shall be in writing and will be considered for just cause. If the request is made by the Respondent, said request shall be presented to the presiding person of the Hearing Panel with a copy to counsel for the Exchange, who shall enter the request into the Respondent's file. If the request is made by counsel for the Exchange, said request shall be presented to the presiding person of the Hearing Panel, with a copy to the Respondent, and in Respondent's file. The presiding person of the Hearing Panel shall promptly consider the request for an adjournment for just cause, rule on the request and inform the parties, in writing if time permits, as to whether the request was, or was not, granted. In the event that the request for an adjournment for just cause is granted, the presiding person of the Hearing Panel shall, at that time, schedule a new hearing date and so inform the parties of the new date.

4. *Exchange of Evidence*—The Exchange and the Respondent shall, not less than 8 business days in advance of the scheduled hearing date, furnish to the members of the Hearing Panel and to each other (i) copies of all documentary evidence each intends to present at the hearing, and (ii) a list of witnesses, including names, addresses and telephone numbers, that each intends to call at the Hearing.

5. *Pre-Hearing Conferences*—Where appropriate, [t]he presiding person of the Hearing Panel, where appropriate,]¹⁶ shall schedule a pre-hearing conference to be held not less than 8 business days in advance of the scheduled hearing date, to be attended by representatives of the Exchange, each of the Respondents and a member of the Hearing Panel. The pre-hearing conference shall be held for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding. At such conference, and if they have not done so previously, the Exchange and the Respondents shall furnish to the Hearing Panel and to each other (i) copies of all documentary evidence such intends to present at the Hearing, and (ii) a list of witnesses, including names, addresses and telephone numbers, that each intends to call at the Hearing.

¹⁶ Phlx confirmed that it inadvertently indicated in its original filing and subsequent amendments that the phrase "the presiding person of the Hearing Panel" was new language; this phrase, however, was already a part of Phlx Rule 960.5. Telephone conversation between Charles Falgie, Director of Enforcement/Counsel, Phlx, and Sapna C. Patel, Attorney, Division, Commission (Dec. 19, 2000).

[; t]The Exchange and Respondent shall also attempt to stipulate to the authenticity of documents and to facts issues not in dispute, and any other items which will serve to expedite the hearing of the matter.

(c) *Conduct of Hearing*. The Hearing Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be present by a representative of the Exchange who, along with Respondent, may present evidence and produce witnesses who shall testify under oath and shall be subject to cross examination. The Hearing Panel may, on its own motion, request the production of documentary evidence and witnesses and may also question witnesses. A transcript of the hearing shall be made and shall become a part of the record. *The costs of the making of such a transcript, including, but not limited to, the costs for the court reporter, reproduction of the transcript and producing copies thereof, shall be equally borne by the Exchange and by Respondent. Counsel for the Exchange shall provide a copy of the transcript of the hearing to each member of the Hearing Panel within 5 business days of receiving the transcript. The Respondent shall be issued a bill for its portion of the costs along with its copy of the transcript.*

(d) *Recommendation of Hearing Panel*. Based on its review of the entire record of the proceeding, the Hearing Panel shall submit a written hearing report to the Business Conduct Committee containing: (i) Proposed findings of fact concerning the allegations in the statement of charges; (ii) conclusions as to whether a violation within the disciplinary jurisdiction of the Exchange has occurred and an enumeration of such violations; and (iii) recommendations as to appropriate sanctions. *The Hearing Panel shall complete such a hearing report no later than 45 days after counsel for the Exchange has served the members of the Hearing Panel with a copy of the transcript of the hearing. The hearing report shall be presented to the Business Conduct Committee at the next Business Conduct Committee meeting after the report is completed.*

Interpretation and Policies

.01 *Intervention*. Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Hearing Panel that he has an interest in the subject of hearing and that the disposition of the

matter, may, as a practical matter, impair or impede his ability to protect that interest. Also, the Hearing Panel may in its discretion permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing shall file with the Hearing Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought.

.02 The Hearing Panel, in exercising its discretion concerning intervention, shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

* * * * *

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 Exchange is proposing to implement certain timing guidelines to promote efficient handling of enforcement matters during the hearing process. Although the Exchange currently utilizes these guidelines as Exchange procedure, the Exchange believes that incorporating them expressly into Exchange rules may promote more effective implementation and monitoring of the timing guidelines, as well as fairness and due process both for respondents to a Statement of Charges authorized by the Committee, and to the Exchange and its Committees.

The Exchange believes that the proposed revisions promote notions of fairness, due process and consistency for the members of the Exchange and its disciplinary arm, the Committee, as they are intended to prevent undue delay, as well alleviate the vexation that such delays may cause.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)¹⁷ of the Act in general, and furthers the objectives of Sections 6(b)(6)¹⁸ and 6(b)(7)¹⁹ of the Act in particular, in that it is designed to ensure that Exchange members, and persons associated with members, are appropriately disciplined for violations of the provisions of the Act, the rules and regulations thereunder, or the rules of the Exchange, as well as providing a fair procedure for the disciplining of Exchange members, and persons associated with members, by fostering a prompt, efficient disciplinary process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 the Exchange consents, the Commission will:

(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-00-13 and should be submitted by January 18, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-33122 Filed 12-27-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43747; File No. SR-Phlx-00-62]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Mandatory Auto-Quote Settings to Update Quotations Based on a Certain Minimum Movement in the Underlying Security

December 19, 2000.

I. Introduction

On August 1, 2000, 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-4² thereunder, a proposal to grant the Chairman of the Exchange's Board of Governors (or his designee) the authority to mandate that the Exchange's Auto-Quote System ("Auto-Quote") be set to update options quotations based on a certain minimum movement in the underlying security. On September 14, 2000, the Commission published the proposed rule change in the **Federal Register**.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 43254 (September 6, 2000), 65 FR 55663.

II. Description of the Proposal

Phlx has proposed to amend Commentary .01 to Exchange Rule 1080, "Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)," to allow the Chairman of the Exchange's Board of Governors (or his designee) ("Chairman") to increase the increment by which the price of the underlying security would have to change before Auto-Quote⁴ would generate new quotes for the overlying options.

Outbound options quotations are forwarded electronically by the Exchange to the Options Price Reporting Authority ("OPRA"), which, in turn, disseminates them to vendors. Recently, due to increased overall options volume and significant increases in the number of quotations generated, OPRA has, at times, been unable to disseminate quotation traffic on a timely basis. To address the capacity constraints, the Commission recently adopted a formula to allocate among the options exchanges a specific allotment of bandwidth capacity for messages transmitted to, and received from, OPRA during peak usage periods.⁵

The proposed rule is intended to enhance the Exchange's ability to manage quote traffic while various solutions to quote capacity issues are being implemented. Currently, one long-standing method the Exchange has used to manage quote traffic is "throttling," or capping outbound quote message traffic to OPRA. For many years, the Exchange's options trading systems have had the ability to throttle outbound message traffic to OPRA by limiting the amount of messages sent to OPRA in a given second. This is accomplished by withholding some Auto-Quote generated messages from dissemination each second until the next second. Throttling may result in some quotations being overridden by subsequent quotations and, thus, prevent older quotations-in-waiting from ever being disseminated.

The proposed rule will allow the Chairman, if the Exchange's options trading systems throttle quotations for at least three minutes, to mandate that Auto-Quote be set to update quotations based on a certain minimum movement

⁴ Auto-Quote is the Exchange's electronic options pricing system that enables specialists to automatically monitor and instantly update quotations, based on incremental changes in the price of the security underlying the option.

⁵ See Securities Exchange Act Release No. 43621 (November 27, 2000), 65 FR 75564 (December 1, 2000) ("Capacity Allocation Formula Release").

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(6).

¹⁹ 15 U.S.C. 78f(b)(7).