

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49456; File No. SR-Phlx-2004-19)

March 22, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to the Execution of Market and Marketable Limit Orders in Certain Trust Shares and Trust Issued Receipts During a Locked Market

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 March 10, 2004, 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 March 19, 2004, the Phlx amended the proposal.³ The Exchange filed the proposed rule change under Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6)⁵ thereunder, which renders the proposal effective upon filing with the Commission. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See March 18, 2004 letter from Angela Saccomandi Dunn, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission and attachments (“Amendment No. 1”). Amendment No. 1 replaces and supersedes the original filing in its entirety.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6). The Phlx provided the Commission with written notice of its intention to file the proposed rule change on March 3, 2004. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on March 19, 2004, the day the Phlx filed Amendment No. 1.

The Exchange proposes to amend Phlx Rule 229, Supplementary Material .05 and .10, to modify the Philadelphia Stock Exchange Automated Communication and Execution ("PACE") System⁶ to provide for the automatic execution of eligible market and marketable limit orders in Trust Shares and Trust Issued Receipts, on a security-by-security basis, received when the PACE Quote is locked.⁷ Such orders would be automatically executed at the PACE Quote. The text of the proposed rule change is below. Proposed additions are in italics.

Rule 229. Philadelphia Stock Exchange Automated Communication and Execution System (PACE)

Supplementary Material: ...

.01-.04 No Change.

Execution of Market Orders

.05 Public Order Exposure System --Subject to Supplementary Material Section .07, all round-lot market orders up to 500 shares and PRL market orders up to 599 shares will be stopped at the PACE Quote at the time of entry into the system ("Stop Price") and be subject to a delay of up to 30 seconds from being executed in order to receive an opportunity for price improvement. If such market order is not executed within the 30 second window, the order will be automatically executed at the Stop Price. If the PACE Quote at the time of order entry into the system reflects a point spread (the difference between the best bid and offer) of \$.05 or less for equities trading in decimals, pursuant to Rule 134 or 125, that order will be executed immediately without the 30 second delay.

⁶ PACE is the Exchange's automated order routing, delivery, execution and reporting system for equities.

⁷ The PACE Quote is the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific, or Philadelphia Stock Exchange, or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote, as appropriate. See Phlx Rule 229.

Subject to these procedures, the specialist may voluntarily agree to execute round-lot market orders of a size greater than 500 shares and PRL market orders of a size greater than 599 shares upon entry into the system.^[7] Where the specialist has voluntarily agreed to automatically execute market orders greater than 599 shares and the market order size is greater than 599 shares, but less than or equal to the size of the PACE Quote, the order is automatically executable at the PACE Quote; if such order is greater than the size of the PACE Quote, the order shall receive an execution at the PACE Quote up to the size of the PACE Quote, either manually or automatically (once this feature is implemented) with the balance of the order receiving a professional execution, in accordance with Supplementary Material, .10(b) below; provided that the specialist may guarantee an automatic execution at the PACE Quote up to the entire size of such specialist's automatic execution guarantee (regardless of the size of the PACE Quote).

When the PACE Quote is locked, in a Trust Share or Trust Issued Receipt, automatically executable market orders entered after the opening will be automatically executed at the locked price, if the specialist determines to elect this feature for a particular security.

.07 - .09 No Change.

.10 (a) In the case of stocks for which the PACE quote bid is less than \$1.00, the provisions of paragraph .10(b) shall apply.

In the case of stocks for which the PACE quote bid is \$1.00 or more:

(i) Marketable Limit Orders --round-lot orders up to 500 shares and the round-lot portion of PRL limit orders up to 599 shares which are entered at the PACE Quote shall be executed at the PACE Quote. Such orders shall be executed automatically unless the member

organization entering orders otherwise elects. Specialists may voluntarily agree to execute marketable limit orders greater than 599 shares. Where the specialist has voluntarily agreed to automatically execute marketable limit orders greater than 599 shares and the order size is greater than 599 shares, but less than or equal to the size of the PACE Quote, the marketable limit order is automatically executable at the PACE Quote; if the order size is greater than 599 shares and greater than the size of the PACE Quote, the marketable limit order shall manually receive an execution at the PACE Quote up to the size of the PACE Quote, with the balance of the order receiving a professional execution, in accordance with Supplementary Material, .10(b) below; provided that the specialist may guarantee an automatic execution at the PACE Quote up to the entire size of such specialist's automatic execution guarantee.

When the PACE Quote is locked, in a Trust Share or Trust Issued Receipt, automatically executable marketable limit orders entered after the opening will be automatically executed at the locked price, if the specialist determines to elect this feature for a particular security.

Marketable limit orders may be eligible for automatic price improvement or manual double-up/double-down price protection pursuant to Supplementary Material .07(c) above.

.10(a) (ii) – (iii) No Change

.10(b) and (c) No Change

.11 - .22 No Change

[⁷See SR-Phlx-97-11.]

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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 proposed rule change is to increase the specialists' efficiency and turn-around time by allowing automatic executions during locked markets in certain securities⁸ at the PACE Quote. Currently, during a locked market, market and marketable limit orders are not executed automatically, but rather, are handled manually by the specialist. This proposed rule change would increase the efficiency of order handling by eliminating the necessity to deal with orders manually.⁹

The proposed automatic procedure will enable PACE customers to automatically, without undue delay, receive prices that accurately reflect market conditions. For instance, an execution at the PACE Quote when it is locked reflects the current market price, notwithstanding that it is

⁸ The Exchange will provide notice as to which Trust Shares and Trust Issued Receipts will be subject to the new automation feature. This notice will be provided initially when the selection occurs, and subsequently each time the specialist selects or deselects this feature.

⁹ This proposed rule change is similar to Securities Exchange Act Release No. 48995 (December 24, 2003), 68 FR 75670 (December 31, 2003) (SR-Amex-2003-102).

locked. The quality of the execution of these orders should be improved and enhanced, as execution time should be reduced while the orders continue to receive the best bid or offer.

Additionally, an unusual footnote that appears in the text of the rule is being deleted.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act¹¹ in particular, in that it will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest by increasing automated order handling.

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

The Exchange 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 foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ At any time within 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 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-Phlx-2004-19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

Exchange. All submissions should refer to file number SR-Phlx-2004-19, and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jill M. Peterson
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).