

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50776; File No. SR-Phlx-2004-80)

December 1, 2004

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Automatic Execution of Certain Orders in PACE During Locked Markets

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on November 23, 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 and II 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 Phlx proposes to amend Phlx Rule 229 to allow PACE³ orders to automatically execute when the market for the security is locked, as chosen by specialists, on a security by security basis. Such orders would be automatically executed at the locked price when they are within the specialist automatic execution parameters.

The text of amended Exchange Rule is set forth below. Proposed new language is italicized; proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ PACE is the Exchange's automated order routing, delivery, execution and reporting system for equities. See Phlx Rule 229.

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

Supplementary Material: ...

.01-.04 No Change.

.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. 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. 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 all the specialists assigned to a security determine[s] to elect this feature for a particular security.

.06 - .09 No Change.⁴

.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

⁴ With the Exchange's consent, the Commission has made a technical correction to the text of the proposed rule change. Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Terri Evans, Senior Special Counsel, Division, Commission, on November 29, 2004 (changing “.07 - .09 No Change” to “.06 - .09 No Change”).

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 all the specialists assigned to a security determine[s] 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

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 increase the specialists' efficiency and turnaround time for orders that are received during a locked market. This proposed rule change would allow specialists trading any security⁵ to elect to automatically execute all eligible PACE orders that are within the specialist's automatic execution parameters when the market for such security is locked.⁶ This proposed rule change expands this feature to all securities, which is currently available only to specialists in Trust Shares and Trust Issued Receipts.⁷

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 should increase the efficiency of order handling by eliminating the necessity to deal with these orders manually. 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 (in this case, the locked price).

⁵ The Exchange will provide notice as to which securities 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.

⁶ As stated in the proposed changes to Phlx Rule 229, if there are competing specialists in a security, this feature will be available only if all the specialists assigned to a security determine to elect this feature for a particular security.

⁷ See Securities Exchange Act Release No. 49456 (March 22, 2004), 69 FR 16331 (March 29, 2004) (SR-Phlx-2004-19).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ in particular, in that it should promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, 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) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

The Exchange has requested that the Commission waive the 30-day operative delay specified in Rule 19b-4(f)(6) to allow the Exchange to make this feature available to its specialists as soon as possible. According to the Exchange, this should allow specialists to increase their efficiency and turnaround time for orders that are received during locked markets. The Exchange has further represented that it has not experienced any problems with orders for Trust Shares and Trust Issued Receipts receiving the locked price nor received any customer complaints.¹²

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.¹³ By waiving the operative delay, all specialists on the Exchange will be able to automatically execute eligible PACE orders when the market for a particular security is locked, not just specialists in Trust Shares and Trust Issued Receipts. Further the Commission notes that the Exchange has represented that there have been no problems or complaints with respect to this feature for Trust Shares or Trust Issued Receipts.

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.

¹² Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Terri Evans, Senior Special Counsel, Division, Commission, on December 1, 2004.

¹³ For purposes of only waiving the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2004-80 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2004-80. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site

(<http://www.sec.gov/rules/sro.shtml>). 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 the filing also will be available for inspection and copying at the principal office of the Phlx.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2004-80 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Margaret H. McFarland
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).