

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51144; File No. SR-Phlx-2004-84)

February 7, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change to Eliminate the Public Order Exposure System Functionality from Phlx Rule 229

On November 26, 2004, 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-4 thereunder,² a proposed rule change to eliminate the Public Order Exposure System ("POES") functionality from Phlx Rule 229. The proposed rule change was published for comment in the Federal Register on December 29, 2004.³ The Commission received no comments on the proposal.

Currently, Phlx Rule 229, Supplementary Material .05, provides that if the PACE⁴ Quote⁵ at the time of the entry of an order into the system reflects a point spread of more than \$.05, round-lot market orders up to 500 shares and PRL⁶ 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50901 (December 21, 2004), 69 FR 78089 ("Notice").

⁴ PACE is the Exchange's automated order routing, delivery, execution and reporting system for equities. See Phlx Rule 229.

⁵ The PACE Quote means the best bid/ask quote among the American, Boston, National, Chicago, New York, or Philadelphia Stock Exchanges; the Pacific Exchange; or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote, as appropriate. See Phlx Rule 229.

⁶ PRL means a combined round-lot and odd-lot order. See Phlx Rule 229.

receive an opportunity for price improvement. During that time, specialists may, but are not required to, improve the execution price of the order to a price better than the Stop Price. Phlx proposes amend Phlx Rule 229 to eliminate the POES functionality. As a result, orders that would have been subject to POES will be automatically executed at the PACE quote without a 30-second delay.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁸ which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Under the proposed rule change, orders that would have been subject to a 30-second delay will now be automatically executed at the PACE quote, thereby improving order turnaround time and reducing the number of manual orders. The Commission notes that specialists will still be able to offer price improvement through the Exchange's Automatic Price Improvement feature, where applicable, and through manual price improvement when certain conditions are met.⁹

⁷ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See Notice.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁰, that the proposed rule change (File No. SR-Phlx-2004-84) be, and it hereby is, approved.

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

Margaret H. McFarland
Deputy Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).