

believes that the extension of the pilot program until December 31, 1995, will provide the Exchange with a better opportunity to further study the operation and effectiveness of the pilot program, and the proposed modifications to be implemented during the extension,¹⁰ prior to either a further extension or permanent approval of the pilot program.¹¹

The Commission further notes that the Exchange has represented that since the last extension of the pilot program,¹² AUTOM has functioned properly and efficiently, that no material problems have been reported by Phlx members or AUTOM users, and that AUTOM has not had significant malfunctions or operational failures.¹³ Finally, because the pilot program is being extended without expansion of the scope of the pilot, the Commission does not believe that the capacity of the Exchange's automated systems will be adversely effected by this extension.¹⁴

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit

1993; in connection with the last extension of the pilot program. See Exchange Act Release No. 33405, *supra* note 4. The Phlx has filed the required reports in connection with the current request for an extension of the pilot program. See Letter from Gerald O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated December 14, 1994, and letter from Jack McCarthy, Vice President, Equity Options Trading Systems, Phlx, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated December 21, 1994 ("December 21 Letter").

¹⁰ See *supra* note 5.

¹¹ Before granting permanent approval of the pilot program, the Commission expects the Phlx to submit a full report, on or before November 1, 1995, describing the operation of AUTOM during this extension and the effect of any modifications made to AUTOM system implemented during the extension. Additionally, the Phlx's AUTOM pilot report should include: (1) a description of the benefits provided by AUTOM; (2) the degree of AUTOM usage, including the number and size of the orders routed through AUTOM and the number and size of the orders executed automatically through the AUTO-X system; (3) the system capacity of AUTOM and AUTO-X; and (4) any problems the Exchange has encountered with the routing and execution features. The Commission also requests that the Phlx submit its request for either an extension or permanent approval of the pilot program on or before November 1, 1995.

¹² See Exchange Act Release No. 33405, *supra* note 4.

¹³ Telephone conversation between Edith Hallahan, Special Counsel, Phlx, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on December 29, 1994.

¹⁴ The Commission expects the Phlx to immediately notify the Commission of any and all developments during this extension of the pilot program having a material effect on the capacity of the Phlx's automated systems. See also, December 21 Letter, *supra* note 9.

the Phlx to continue the AUTOM pilot program on an uninterrupted basis. Specifically, the Commission believes that the Phlx's proposal to extend the AUTOM pilot program does not raise any new issues because it merely extends the pilot program as it is currently operating. Further, the Commission continues to believe that the pilot program is beneficial to maintaining the quality and efficiency of the Phlx's market. Finally, the Commission notes that there have been no adverse comments concerning the pilot program since its implementation. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 11A of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 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-94-41 and should be submitted by January 30, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-Phlx-94-41), as amended, is approved through December 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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¹⁵ 15 U.S.C. § 78s(b)(2) (1982).

¹⁶ 17 CFR 200.30-3(a)(12) (1993).

[Release No. 34-35188; File No. SR-Phlx-94-46]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Regarding a Post Primary Trading Session

January 3, 1995.

I. Introduction

On October 3, 1994 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "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 extend the close of trading on the Exchange's equity trading floor from 4:00 to 4:15 p.m., creating a new Post Primary Session ("PPS"). On November 25, 1994, the Phlx submitted Amendment No. 1 to the proposed rule change.³

The proposed rule change, as amended, was published for comment in Securities Exchange Act Release No. 35007 (November 25, 1994), 59 FR 61915 (December 2, 1994). No comments were received on the proposal.

Pursuant to the current Phlx Rule 101 (Hours of Business), trading in any equity security on the Exchange's equity floor ends at 4:00 p.m. The PPS, however, will extend these hours for an additional fifteen minutes. Thus, the hours of the Phlx's auction trading market will be extended from the current hours of 9:30 a.m. to 4:00 p.m. to the new hours of 9:30 a.m. to 4:15 p.m.

Under the Phlx's proposal to extend its trading hours, all Exchange rules applicable to floor trading during the Exchange's regular hours⁴ will continue to apply to floor trading during the PPS, except that during the PPS, (1) orders that are designated "PPS" are eligible for execution, and (2) GTX orders are executable after the close of the PPS (*i.e.*, GTX orders are executable after 4:15 p.m. instead of 4:00 p.m.). In order to facilitate the extension of trading, the

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1991).

³ See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Glen Barrentine, Senior Counsel, Commission, dated November 23, 1994.

⁴ "Regular" hours of trading excludes the after hours trading facility for GTX orders permissible pursuant to Phlx Rule 232(c). This Rule defines a "GTX" order as one that is good until cancelled, eligible for primary market protection based on volume that prints on the New York Stock Exchange ("NYSE") or American Stock Exchange ("Amex") after-hours trading session.

Exchange is amending the following Phlx rules: Rule 101—Hours of Business; Rule 229—Philadelphia Stock Exchange Automated Communication and Execution System (“PACE”); Rule 232—Handling Orders When the Primary Market is Not Open for Free Trading (EXP, PPS, GTX Orders); and Equity Floor Procedure Advice EF-1—Designating Orders for Execution in Instances Where the Primary Market is Not Open in an Issue for which the Phlx is Open for Free Trading.

As indicated above, Phlx Rule 101 will be amended to reflect the extension of the hours of business. Second, the Exchange is amending Phlx Rule 229, governing the operation of PACE, to designate PACE as an eligible order routing system for PPS eligible orders. PACE will not, however, be available as an order execution mechanism during PPS.⁵

Third, Phlx Rule 232 currently only governs after-hours trading (crossing session) of GTX orders. The Exchange is amending it, however, so that it will specify that GTX orders are executable after the PPS close, and also encompass (1) PPS, and (2) rules governing trading on the Phlx when the primary market is not open for free trading in an issue at a time that the Phlx is open for free trading. Rather than assigning PPS a new rule number, the applicable PPS provision is being added to Phlx Rule 232 in order to group into a single rule the three Exchange provisions relating to trading on the Phlx during periods when the primary market is not open for free trading.⁶

With respect to the PPS provision, Rule 232 will: require that orders be designated PPS to be eligible for execution during the PPS; and specify that since PPS is merely an extension of the Exchange’s auction market, whereby bids and offers are dynamically updated for trading under normal auction market principles, that Exchange rules applicable to floor trading during the “regular” session will continue to apply. In this regard, market, limit and contingent order types currently acceptable under Exchange rules will be accepted for PPS if so designated.⁷

⁵ Orders received by 4:00 p.m. Eastern Time as determined electronically by the PACE system are eligible for execution during regular trading hours (*i.e.*, before the PPS). See Phlx Rule 229 Commentary .17.

⁶ With respect to equities, “free” trading is that which occurs after the initial opening of a security, but not during a trading halt.

⁷ For example, pursuant to Phlx Rule 207, a “GTC PPS” (such an order is good ‘til cancelled but executable during PPS, and differs from a GTX order in that the later is eligible for execution after the close of the Exchange) order will be eligible for PPS execution, and, if not executed, will be eligible

Finally, the GTX provisions will be renumbered as paragraph (c) of Phlx Rule 232.

With respect to the situation addressed in Equity Floor Procedure Advice EF-1—where the Phlx is open for trading before the primary market is open, or during a non-regulatory halt in trading on the primary market—this will be codified into Phlx Rule 232(a). In addition, the use of the yellow ticket, designating orders eligible for execution when the Phlx is open for trading in such a circumstance, will be replaced with the use of the designator “EXP” (meaning ex-primary) to parallel the designators “PPS” and “GTX” in Rule 232.⁸

The Commission finds that the proposed rule change to extend the Phlx’s auction market trading session to 4:15 p.m. is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).⁹ In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that it is reasonably designed to promote just and equitable principles of trade, and, in general, perfect the mechanism of a free and open national market system.

The Commission believes that the decision to change the Exchange’s trading hours does not raise any new regulatory concerns. Currently, auction market trading after 4:00 p.m. (EST) occurs on the Pacific Stock Exchange (“PSE”).¹⁰ The Phlx system will operate in a substantially similar manner and enable the Phlx to compete with the PSE for after hours volume. Specifically, the Phlx PPS will continue to provide full transparency by disseminating quotes through the Consolidated Quotation System and reporting trades to the consolidated tape. In addition, there will continue to be complete access to the Phlx market during PPS and the

for execution during ensuing days because of the GTC designation.

⁸ The Phlx is also making a few minor changes to clarify that the Phlx may not be open for free trading during a regulatory trading halt on the primary market, and to reword the three-year cycle for imposing fines (*i.e.*, the fine schedule is structured such that successive violations committed during a three-year time span result in successive increased fines).

⁹ 15 U.S.C. § 78f(b) (1988).

¹⁰ See Securities Exchange Act Release No. 29631 (August 30, 1991), 56 FR 46025 (September 9, 1991).

usual auction market rules will continue to apply. Moreover, in order to preserve the execution quality of limit orders placed on the specialists’ books during “regular” trading hours, such orders will not automatically migrate to the PPS, but rather will do so only if the order is so designated (*i.e.*, with an EXP indicator on the ticket). Finally, the Commission has not received any comment letters from the public or Phlx members raising any regulatory issues in connection with the extension of the Phlx auction market hours to 4:15 p.m.

The Commission notes, however, that during the proposed extension of trading hours, the PSE is the only other national securities exchange that will be operating an auction market. In this regard, the Phlx has represented to the Commission that the Intermarket Trading System (“ITS”) will be in operation as a link between the two exchanges during the PPS.¹¹ Thus, ITS commitments will be able to be routed back and forth, just as during the regular trading hours.

Although the NYSE is operating its Off-Hours Trading (“OHT”) facility and the Amex is operating its after-hours trading session during this time period, these sessions are limited to accepting single stock orders priced at either the NYSE or Amex closing price, respectively, or effecting portfolio trades. Because the PPS trading session will not overlap the 5:00 p.m. executions in Crossing Session I of the NYSE’s OHT facility or the Amex’s after-hours trading facility, the proposal being approved today does not raise market structure issues regarding the interaction between the PPS and these two after-hours systems.

Accordingly, the Commission does not believe that an extension of the Phlx’s auction market trading hours to 4:15 p.m. will have an adverse effect on the maintenance of fair and orderly markets or disadvantage public customers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-Phlx-94-46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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¹¹ See letter from Gerald O’Connell, First Vice President, Phlx, to Amy Bilbija, Attorney, Commission, dated December 28, 1994.

¹² 15 U.S.C. § 78s(b)(2) (1988).

¹³ 17 CFR 200.30-3(a)(12) (1991).