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

Margaret H. McFarland,  
*Deputy Secretary.*

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[ Release No. 34-36429; File No. SR-PHLX-95-35]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Routing and Delivery of Broker-Dealer Orders in USTOP 100 Index Options Through the Automated Options Market System**

October 27, 1995.

On May 22, 1995, 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to amend its rules to allow the orders of PHLX member and non-member broker-dealers in USTOP 100 Index ("TPX") options to be routed and delivered through the Exchange's Automated Options Market ("AUTOM") system and executed manually. The broker-dealer TPX option orders will not be eligible for AUTO-X, the automatic execution feature of AUTOM.

Notice of the proposal appeared in the Federal Register on July 11, 1995.<sup>3</sup> No comments were received on the proposed rule change.<sup>4</sup>

Currently, only public customer orders for up to 500 options contracts are eligible for AUTOM<sup>5</sup> and public customer orders for up to 25 contracts, in general, are eligible for AUTO-X,<sup>6</sup> the automatic execution feature of AUTOM.<sup>7</sup> AUTOM, which has operated on a pilot basis since 1988 and was most recently extended through December 31, 1995,<sup>8</sup> is an on-line system that allows electronic Delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor. AUTO-X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO-X are handled manually by the specialist.

The purpose of the proposal is to permit TPX orders for the accounts of

broker-dealers to be delivered through AUTOM. Although broker-dealer TPX option orders will be delivered through AUTOM, they will not be eligible for AUTO-X.

The PHLX believes that extending AUTOM to broker-dealer TPX option orders will allow additional orders to benefit from AUTOM's prompt and efficient electronic order delivery and reporting. This, in turn, should add liquidity to the PHLX's marketplace for TPX options buy encouraging broker-dealer orders who seek such automated order routing treatment. As noted above, AUTO-X will not be available for broker-dealer TPX Orders; all such broker-dealer TPX orders will be handled manually by the specialist.

The PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

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, and, in particular, the requirements of Sections 6 and 11A.<sup>9</sup> Specifically, the Commission believes that allowing broker-dealers to use AUTOM for TPX options orders will facilitate the efficient handling and reporting of broker-dealer orders in TPX options, thereby improving TPX order processing and turnaround time. In addition, by providing increased order routing efficiencies for broker-dealer TPX orders, the proposal may help to attract broker-dealer TPX orders, and thus help to improve the depth and liquidity of the market for TPX options.

Under the proposal, broker-dealer TPX orders will not be eligible for AUTO-X; thus, only public customer orders will continue to receive the benefits of AUTO-X, including immediate executions at the displayed market quote and nearly instantaneous confirmations. The Commission notes that limiting AUTO-X to public customer orders is consistent with the Exchange's current practice.

In addition, based upon representations by the PHLX, the Commission believes that the AUTOM system has sufficient capacity to handle broker-dealer TPX orders and, therefore, that the proposal will not expose the PHLX's options markets to the risk of failure or operational break-down.<sup>10</sup>

<sup>5</sup> See Securities Exchange Act Release No. 35782 (May 30, 1995), 60 FR 30136 (File No. SR-PHLX-95-30).

<sup>6</sup> Recently, the Commission approved a proposal increasing the maximum number of public customer orders in USTOP 100 Index options that are eligible for AUTO-X from 25 to 50 contracts. See Securities Exchange Act Release No. 35781 (May 30, 1995) (order approving File No. SR-PHLX-95-29).

<sup>7</sup> The Commission has approved a PHLX proposal to codify the use of AUTOM and AUTO-X for index options. See Securities Exchange Act Release No. 34920 (October 31, 1994), 59 FR 5510 (November 7, 1994) (order approving File No. SR-PHLX-94-40). In addition, the Commission has approved a PHLX proposal to codify the Exchange's practice of accepting certain orders for AUTOM and AUTO-X. See Securities Exchange Act Release No. 35601 (April 13, 1995), 60 FR 19616 (April 19, 1995) (order approving File No. SR-PHLX-95-18).

<sup>8</sup> See Securities Exchange Act Release No. 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR-PHLX-94-41). See also Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR-PHLX-88-22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR-PHLX-88-33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR-PHLX-89-1, extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR-PHLX-89-03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR-PHLX-90-16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR-PHLX-90-34), extending pilot through December 31, 1991); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR-PHLX-91-31, permitting AUTO-X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 55146 (order approving File No. SR-PHLX-91-33, permitting AUTO-X for all strike prices and expiration months); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR-PHLX-90-03, extending pilot through December 31, 1993); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR-PHLX-92-38, permitting AUTO-X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR-PHLX-93-57, extending pilot through December 31, 1994).

<sup>9</sup> 15 U.S.C. 78f and 78k-1 (1988).

<sup>10</sup> See September 26 Letter, *supra* note 4.

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> See Securities Exchange Act Release No. 35925 (June 30, 1995), 60 FR 35771.

<sup>4</sup> On September 26, 1995, the PHLX represented that the Exchange's AUTOM system has sufficient capacity to accommodate the additional message traffic that will result from routing broker-dealer TPX orders through AUTOM. See Letter from William H. Morgan, Vice President, Trading Systems, PHLX, to Michael Walinskas, Office of Market Supervision, Commission, dated September 26, 1995 ("September 26 Letter").

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-PHLX-95-35) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 35-26401; 70-8411]

**Allegheny Power System, Inc.,  
Supplemental Order Authorizing  
Acquisition of Nonutility Subsidiaries;  
Issuance of Securities; and Provision  
of Services to Associates**

October 27, 1995.

Allegheny Power System, Inc. ("APS"), a registered holding company, AYP Capital, Inc. ("AYP"), a nonutility subsidiary company of APS, and Allegheny Power Service Corporation ("APSC"), all of New York, New York, have filed a post-effective amendment to an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32 and 33 of the Public Utility Holding Company Act of 1935, as amended ("Act"), and rules 45, 53, 87, 90 and 91 thereunder. The Commission issued a notice of the filing of the post-effective amendment on July 7, 1995 (HCAR No. 26327).

By order dated July 14, 1994 (HCAR No. 26085), APS was authorized to organize and finance AYP to invest in: (i) Companies engaged in new technologies related to the core utility business of APS and (ii) companies for the acquisition and ownership of exempt wholesale generators ("EWGs").

By order dated February 3, 1995 (HCAR No. 26229), AYP was authorized to engage in the development, acquisition, construction, ownership and operation of EWGs and in development activities with respect to: (i) Qualifying cogeneration facilities and small power production facilities ("SPPs"); (ii) nonqualifying cogeneration facilities, nonqualifying SPPs and independent power production facilities ("IPPs") located within the service territories of APS public utility subsidiary companies; (iii) EWGs; (iv) companies involved in new technologies related to the core business of APS; and (v) foreign utility companies ("FUCOs"). AYP was also authorized to consult for nonaffiliate companies. APS was authorized to

increase its investment in AYP from \$500,000 to \$3 million.

The post-effective amendment, as amended, seeks Commission authorization to allow APS and AYP to engage in several activities. A total of \$300 million in financing also is sought.

First, the post-effective amendment seeks Commission authorization to allow AYP or a special-purpose subsidiary ("NEWCO") to provide energy management services ("EMS") and demand side management ("DSM") services to nonassociates at market prices and to associate companies at cost. The amended application states that the EMS would include: (i) Identification of energy cost reduction and efficiency opportunities; (ii) design of facility and process modifications to realize such efficiencies; (iii) management of or the direct construction or installation of energy conservation equipment; (iv) training of client personnel in operation of equipment; (v) maintenance of energy systems; (vi) design, management, construction and installation of energy management systems and structures; (vii) performance contracts; (viii) identifying energy conservation or efficiency programs; (ix) system commissioning; (x) reporting system results; and (xi) other similar or related energy management activities.

The DSM services would include: (i) Design of energy conservation programs; (ii) implementation of energy conservation programs; (iii) performance contracts for DSM work; (iv) monitoring and evaluating DSM programs; and (v) other similar or related DSM activities.

With respect to EMS and DSM services, AYP and the NEWCO would finance, either through direct loans or leases of EMS and DSM facilities and equipment purchased by AYP and the NEWCO, EMS and DSM equipment provided to EMS and DSM customers. AYP and the NEWCO might retain title to the EMS and DSM facilities and equipment. Loans would enable customers to purchase goods and services from third parties on their own terms and conditions. Loans would be evidenced by promissory notes.

The Commission previously has authorized registered holding companies to form and finance special-purpose subsidiaries to engage in EMS and DSM services.<sup>1</sup> For example, the

<sup>1</sup> EUA Cogenex Corp., Holding Co. Act Release No. 25697 (Dec. 9, 1992) (acquisition of New England Sun Control, Inc.); Northeast Utilities, Holding Co. Act Release No. 25114-A (July 27, 1990) (acquisition of HEC Energy Corp.); Eastern Utilities Associates, Holding Co. Act Release No. 24273 (Dec. 19, 1986) (acquisition of Citizens Heat

Commission authorized in December 1992 the formation by Entergy Corporation of a non-utility subsidiary to acquire an interest in Systems and Service International, Inc. for \$6.4 million and to engage in DSM in Arkansas, Louisiana, and Mississippi.<sup>2</sup> The Commission also previously has authorized such subsidiaries to engage in construction activities relative to EMS and DSM services.<sup>3</sup> Finally, it previously has authorized loans from special-purpose subsidiaries to EMS and DSM customers for EMS and DSM services.<sup>4</sup> Specifically, it has authorized Southern Development and Investment Group, Inc. ("Development") to invest up to "\$40 million to finance the costs of equipment or provide customer financing of equipment in connection with energy management and efficiency services provided by Development."<sup>5</sup>

Although the Commission previously has imposed limitations on EMS and DSM services offered by special-purpose subsidiaries, it has recently departed from this practice in appropriate cases.<sup>6</sup>

Second, the post-effective amendment seeks Commission authorization to allow AYP to engage in activities related to the development, acquisition, ownership, construction and operation of FUCOs and to invest in FUCOs through various types of investment vehicles, including limited partnerships or other types of funds, the sole objective of which is to make investments in one or more FUCOs.

The Commission previously has authorized investments in FUCOs through various types of investment vehicles. For example, the Commission has authorized TriStar Ventures Corporation ("TriStar"), a nonutility subsidiary company of Columbia Gas System, to form, acquire, finance and own securities or interests in FUCOs directly or indirectly through special-purpose domestic corporations, foreign corporations, partnerships, limited liability companies, and joint ventures.<sup>7</sup>

and Power Corp.); Central and South West Corp., Holding Co. Act Release No. 23818 (Sept. 4, 1985) (joint venture with Time Energy Management System Southwest, Inc.).

<sup>2</sup> Entergy Corp., Holding Co. Act Release No. 25718 (Dec. 28, 1992).

<sup>3</sup> HEC, Inc., Holding Co. Act Release No. 26108 (Aug. 19, 1994).

<sup>4</sup> Southern Co., Holding Co. Act Release No. 26221 (Jan. 25, 1995).

<sup>5</sup> See also Central and South West Corp., Holding Co. Act Release No. 26367 (Sept. 1, 1995).

<sup>6</sup> Eastern Utilities Associates, Holding Co. Act Release No. 26232 (Feb. 15, 1995); Central and South West Corp., Holding Co. Act Release No. 26367 (Sept. 1, 1995).

<sup>7</sup> Columbia Gas System, Holding Co. Act Release No. 26209 (Dec. 29, 1994). See also Southern Co., Holding Co. Act Release No. 26069 (Aug. 3, 1994)

<sup>11</sup> 15 U.S.C. 78s(b)(2) (1982).

<sup>12</sup> 17 CFR 200.30-3(a)(12) (1994).