SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46474; File No. 4–208]

Intermarket Trading System; Order Granting Approval of the Nineteenth Amendment to the ITS Plan Relating to the Philadelphia Stock Exchange, Inc.'s Implementation of a Remote Specialist Program

On May 3, 2002, the Intermarket Trading System Operating Committee (''ITSOC'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 11A3a3–2 thereunder,[2] a proposed amendment (''Nineteenth Amendment'') to the restated ITS Plan.[3] The proposed amendment recognized the Phlx's implementation of a remote specialist program. Notice of the proposed amendment appeared in the **Federal Register** on June 26, 2002.[4] The Commission received no comments on the proposed amendment. This order approves the proposed amendment.

The proposed amendment recognizes the Phlx's implementation of its remote specialist program.[5] Specifically, the ITSOC proposes to amend Sections 1 (''Definitions''), 6(a)(i)(A) (''Receipt of Quotations''), 6(a)(ii) (''Description of ITS Transactions''), and 8(a) (''System Access'') of the ITS Plan to include references regarding the premises of Phlx Remote Specialists on which ITS stations are located, and define the terms ''Phlx Remote Specialist,''[6] ''Phlx Registered Specialist,''[7] and ''Phlx Designated Specialist.''[8]

The Commission finds that the proposed amendment is consistent with the Act and the rules and regulations thereunder applicable to the ITS and, in particular, Sections 11A(a)(1)(C)(ii) and (D) of the Act,[9] and Rule 11A3–2(c)(2) thereunder,[10] which require among other things, that a plan amendment must be necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and shall remove impediments to, and perfect the mechanisms of, a national market system.

The proposal provides for the recognition of the Phlx's use of remote specialists to carry out their specialist operations off the floors of the Phlx, similar to the BSE and the PCX.[11] The Commission believes that the proposed amendment should improve the efficiency and reliability of ITS.

It is therefore ordered, pursuant to Section 11A(a)(3)(B) of the Act,[12] that the proposed Nineteenth Amendment be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23605 Filed 9–16–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] The ITS is a National Market System (''NMS'') plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

The ITS Participants include the American Stock Exchange LLC (Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Chicago Stock Exchange, Inc. (''CHX''), the Cincinnati Stock Exchange, Inc. (''CSE''), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc. (''NYSE''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (''Participants'').

[4] *See* Securities Exchange Act Release No. 46091 (June 19, 2002), 67 FR 43182.

[5] *See* Securities Exchange Act Release No. 45184 (December 21, 2001), 67 FR 622 (January 4, 2002) (order approving SR–Phlx–2001–98).

[6] The term ''Phlx Remote Specialist'' is defined in the proposed amendment as a Phlx Registered Specialist who is authorized by Phlx Rule 461 to conduct his/her regular specialist trading activities at remote locations off the floor of the Phlx.

[7] The term ''Phlx Registered Specialist'' is defined in the proposed amendment as a Phlx member who has been appointed and registered pursuant to Phlx Rule 202 to act as a market maker in one or more securities traded through ITS.

[8] The term ''Phlx Designated Specialist'' is defined in the proposed amendment as a Phlx Registered Specialist appointed by the Phlx to coordinate the handling of commitments to trade received by the Phlx.

The Designated Specialist (''DS'') is responsible for responding to incoming ITS Commitments. In the case of a Commitment that has been divided among more than one Specialist, the DS is (a) the Specialist who has been allocated the largest individual portion of the Commitment pursuant to the split, or (b) if two or more Specialists each receives an equal amount of the Commitment split which is larger than the amount allocated to any other Specialist, the Specialist who first quoted the volume. Any portion of the Commitment that remains unallocated after the Commitment split (the ''Remaining Portion'') is made available for execution by the Primary Specialist and the Remaining Portion is ignored for purposes of determining the Designated Specialist.

Inbound ITS Commitment volume is split based on PHLX ''available volume'' at the time the Commitment arrives, which may consist of two or more Specialists. The ''available volume'' is (1) the displayed bid or offer size, plus (2) any non-displayed automatic matchable interest (in each case, less any volume that has been marked by the system as unavailable because of either a trade that has occurred or because of another incoming Commitment that was received prior to the arrival of the Commitment with respect to which the split is being made).

Automatic matchable interest represents manually quoted interest and round lot limit order volume other than (a) block limit orders that have not been displayed, (b) All Or None limit orders, and (c) Short Sale limit orders that have not been displayed. The incoming ITS Commitment is split among the available volume based on price, then account type (agency before principal) and then time, if the available volume is greater than the inbound ITS Commitment. For instance, as between two principal quotes at the same price, the earlier in time participates first and may fill the entire incoming Commitment up to the size of his or her bid/offer.

In the case of a Commitment divided among more than one Specialist, after a certain time has expired (exposing their split of the ITS Commitment to eligible specialists and allowing the non-Designated Specialists to respond), then the Designated Specialist may respond, which causes a single Phlx response to be sent. *See* email from Carla Behnfeldt, Phlx, to Katherine England, Assistant Director, Joseph Morra, Special Counsel, and Lisa N. Jones, Attorney, Division of Market Regulation, Commission, dated Septeber 5, 2002.

[9] 15 U.S.C. 78k–1(a)(1)(C) (ii) and (D).

[10] 17 CFR 240.11A3–2(c)(2).

[11] *See* Securities and Exchange Act Release No. 43520 (November 3, 2000), 65 FR 68165 (November 14, 2000) (order approving the recognition of BSE's and PCX's remote specialist programs in ITS).

[12] 15 U.S.C. 78k–1(a)(3)(B).

[13] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46479; File No. SR–Amex–2002–57]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Automatic Execution of Broker-Dealer Options Orders

September 10, 2002.

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 June 24, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. On August 2, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On

[1] 15 U.S.C 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer L. Colihan, Special Counsel, Division of Market Regulation (''Division''), Commission, dated August 1, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange: (1) Re-numbered the last paragraph of Amex Rule 933 as ''(e)''; (2) clarified that options orders that are routed to the specialist's Amex Options Display Book (''AODB'') are manually executed; (3) deleted a footnote relating to trading on the International Securities Exchange; and (4)

September 4, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 933 to permit off-floor and on-floor broker-dealer options orders to be executed, on a case-by-case basis, through the Exchange's automatic execution system (''Auto-Ex''). Below is the text of the proposed rule change. Proposed new language is italicized; deletions are bracketed.

Rule 933. Automatic Execution of Options Orders

(a) Only non-broker/dealer customer orders shall be eligible for execution on the Exchanges Automatic Execution System (Auto-Ex), *except that the Options Floor Trading Committee (''Floor Committee'') may determine, on an issue-by-issue basis, to allow the following types of orders to be executed on Auto-Ex:*

(1) *Broker-dealer orders; or*

(2) Broker-dealer orders that are not for the accounts of market makers or specialists on an exchange who are exempt from the provisions of Regulation T of the Federal Reserve Board pursuant to Section 7(c)(2) of the Securities Exchange Act of 1934.

For the purposes of this Rule, the term broker/dealer includes foreign broker/dealers.

(b) Broker-dealer orders entered through the Exchange's order routing system will not be automatically executed against orders in the limit order book. Broker-dealer orders may interact with orders in the limit order book only after being re-routed to the Amex Options Display Book (AODB) for execution.

(c) If the Floor Committee permits broker-dealer orders to be automatically executed in an issue pursuant to this Rule, then it may also permit the following with respect to such orders:

(1) The maximum order size eligibility for broker-dealer orders may be less than the applicable order size eligibility for non-broker-dealer customer orders; and

(2) Non-broker-dealer customer orders may be eligible for automatic execution at the current best bid or offer displayed by another options exchange pursuant to Commentary .01 while broker-dealer orders are not so eligible.

(d) Exchange Registered Options Traders must assure that orders for their own accounts are not entered on the Exchange and represented or executed in violation of the following provisions: Rule 157 (Orders With More Than One Broker), Rule 103(b) (Initiation of Transaction for Joint Acct), Rule 111(c) (Concurrent Representation), and Section 9 of the Securities Exchange Act of 1934 (Wash Sales).

(e) [(b)] The Exchange shall determine the size parameters of orders eligible for entry into its Automatic Execution System (Auto-Ex). An Auto-Ex eligible order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 15 seconds between entry of each such order in a call class and/or a put class for the same option issue. Members and member organizations are responsible for establishing procedures to prevent orders in a call class and/or a put class for the same option issue for any account in which the same person is directly or indirectly interested from being entered at intervals of less than 15 seconds.

Commentary

.01 No change
.02 No change
.03 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 Amex 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 III below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex initiated Auto-Ex in certain index options in the mid-1980s and later extended its application to equity options.[5] The introduction of the Exchange's Auto-Ex system was a response to member firm initiatives indicating that customers would gain confidence in the listed options markets if quick, single-price executions at posted prices were available.

Due to technological advances over the past several years, a greater number of customers and other market participants now have obtained the ability to use a combination of high speed automated market watch and electronic order routing systems to enter orders directly and indirectly into Auto-Ex. In recent years, the Exchange received Commission approval to enhance Auto-Ex by providing automatic price matching and improvement for orders executed through Auto-Ex, thereby eliminating the need for certain orders to be routed to the specialist's AODB.[6]

For the purpose of permitting both on-floor and off-floor broker-dealer orders access to the Exchange's Auto-Ex system, the Exchange is proposing to permit entry of broker-dealer orders in Auto-Ex, subject to Options Floor

replaced the order designation described as ''CUST/BD'' with ''BD.''

[4] See Letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer L. Colihan, Special Counsel, Division, Commission, dated September 3, 2002 (''Amendment No. 2''). In Amendment No. 2, the Exchange deleted the reference to ''other broker-dealers'' in proposed subparagraph (d) of Amex Rule 933.

[5] *See* Securities Exchange Act Release Nos. 22610 (November 8, 1985), 50 FR 47480 (November 18, 1985) (pilot program for XMI options); 23544 (August 20, 1986), 51 FR 30601 (August 27, 1986) (permanent approval of XMI pilot); and 24714 (July 17, 1987), 52 FR 28396 (July 29, 1987) (expansion to competitively traded options). Auto-Ex is an automated execution system that enables member firms to route public customer market and limit orders in options for automatic execution at the bid or offer displayed at the time the order is entered. According to the Exchange, Auto-Ex executes, at the displayed bid or offer, customer market and immediately executable limit option orders up to a specified number of contracts routed through the Common Message Switch (''CMS'') and the Amex Order File (''AOF''). There are, however, some situations in which orders otherwise eligible for execution on Auto-Ex are routed to the specialist's book, known as the ''AODB,'' for an execution. These situations occur when (i) the best bid or offer is represented by a limit order on the AODB, (ii) the best bid or offer is locked or crossed, (iii) there is a better bid or offer being displayed by a competing market or (iv) when certain systems allowable parameters have been exceeded. Automatic executions through Auto-Ex are currently available for public customer orders of 250 contracts or less in all series of options traded on the Exchange except for options on the QQQ. For QQQ options, automatic executions are available up to 2,000 contracts for the two near term series and 1,000 contracts for all other series. *See* Securities Exchange Act Release Nos. 45756 (April 15, 2002), 67 FR 19603 (April 22, 2002) and 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002).

[6] In particular, the recent Auto-Ex enhancements provide: (1) automatic price matching when the best bid or offer for that series being displayed by a competing market is within a specified number of trading increments or ''ticks'' of the bid or offer being displayed by the Amex; and (2) automatic price improvement on Auto-Ex for orders within the established order size parameters when Amex is displaying the best bid or offer and specialists and ROTs wish to improve upon their own bid or offer by a specified number of trading increments. *See* Commentary .01 to Amex Rule 933.

Committee (the ''Floor Committee'') approval. The Floor Committee would be permitted to approve a specialist's request for: (a) automatic execution of broker-dealer orders, regardless of type, in particular options issues; or (b) automatic execution of broker-dealer orders in particular options issues, excluding those orders that are for the accounts of registered market makers [7] and specialists.

Under the proposed rule change, if the Floor Committee permits automatic execution of all broker-dealer orders, then any order, regardless of type in a particular option issue, for the account of a registered market maker or specialist, including orders for Amex Registered Options Traders (''ROTs''), would be eligible for automatic execution through Auto-Ex. However, execution of broker-dealer orders would be provided outside of Auto-Ex when orders reside in the limit order book.[8] Specifically, if there is a customer limit order in the in the limit order book that is priced at the national best bid or offer (''NBBO''), then an inbound market or limit order for the account of a broker-dealer will be re-routed to the specialist's AODB for manual execution.

Under the proposed rule, automatically executed broker-dealer orders may be subject to certain limitations. First, broker-dealer orders may have a smaller order size eligibility parameter for automatic execution than public customer orders. Second, broker-dealer orders in an issue may be ineligible for NBBO step-up while customer orders in that issue are eligible for NBBO step-up pursuant to Commentary .01 to Amex Rule 933.[9] Accordingly, unless automatic step-up executions on Auto-Ex are authorized by the Floor Committee for eligible broker-dealer orders, such orders would be rejected and re-routed to the specialist's AODB for manual execution.

The Exchange's electronic order routing system currently distinguishes between customer and non-customer orders based upon the provided order origin information. Consistent with Amex Rules, order tickets are required to designate the type of account as part of the terms for each order. For example, the current account type codes for options transactions are as follows: (1) ''BD'' indicates a broker-dealer order for a customer order; (2) ''CUST'' identifies a clearing member's account that handles only transactions cleared and positions carried by a clearing member on behalf of its customers; such an account does not handle transactions of market makers and specialists, which are cleared through their own accounts; (3) ''FIRM'' identifies a clearing member's account that handles only transactions cleared and positions carried on behalf of non-customers; (4) ''PRIN'' identifies a member's market maker account that handles only transactions cleared and positions carried on behalf of an Amex ROT; and (5) ''NMEM'' identifies a non-member's market maker account that handles only transactions cleared and positions carried on behalf of a non-member market maker. Currently, only orders with ''CUST'' designations, and which are not designated ''BD,'' are permitted to be automatically executed through Auto-Ex. The proposal would give the Floor Committee the discretion to allow orders with ''BD,'' ''FIRM, ''PRIN,'' and ''NMEM'' designations to be automatically executed.

In connection with permitting the automatic execution of orders for the accounts of Amex ROTs and other Amex broker-dealers, certain limitations under current Amex rules will apply. First, Amex Rule 157 prohibits members, member firms or subsidiaries of such firms to use more than one broker for the same order or orders for the same principal. Amex Rule 157, designed to prohibit unfair competition, would prohibit a member from entering an electronic order that could match against an order for an affiliated account represented by a broker or affiliated trader in the crowd.[10] Second, Amex Rule 103(b) prohibits on-floor transactions for joint accounts with non-members and other persons over which the Exchange does not have jurisdiction.[11] Therefore, a member cannot enter an order for a joint account in which a non-member has an interest.[12] Third, Amex Rules 111(c), 950(c) and Commentary .06 to Amex Rule 958 prohibit a ROT, while on the floor of the Exchange, from effecting transactions for his own account while also handling as a broker off-floor orders in the same security during the same trading session. Fourth, Amex Rules 111(d), 950(c), Commentary .01 to Amex Rule 950(c) and Commentary .06 to Amex Rule 958 restrict ROTs and market makers located on an exchange or trading floor other than the Amex (''Competing Market Makers'') from retaining priority over, or having parity with, an off-floor order when establishing or increasing positions.[13] Accordingly, pursuant to Amex Rule 950(c) and Commentary .01 to Amex Rule 950(c), orders establishing or increasing positions for ROTs and Competing Market Makers are required to be so identified so that such orders are routed to the specialist's AODB for manual handling. However, orders to liquidate or cover an existing position could be permitted an automatic execution via Auto-Ex. Lastly, the automatic execution of orders for the accounts of Amex ROTs and other Amex broker-dealers would not be permitted if that same ROT or an associated market maker or specialist has signed onto Auto-Ex in that security as a ''wash sale'' may result in violation of Article V, Section 4(c) of the Exchange's Constitution as well as section 9 of the Act.[14]

These prohibitions against ''dual representation'' would be violated in the following situation: A ROT in the XYZ trading crowd enters an order in XYZ options for his own account with a floor broker. The floor broker then represents the order while the market maker is still present in the XYZ trading crowd. A similar violation would occur if, a ROT in the XYZ trading crowd initiated an order in XYZ options with his upstairs

[7] Section 3(a)(38) of the Act defines ''market maker'' as any specialist permitted to act as a dealer, any dealer acting in the capacity of a block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications systems or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis. 15 U.S.C. 78c(3)(38).

[8] Similar to the Pacific Exchange, Inc. (''PCX'') and the Chicago Board Options Exchange, Inc. (''CBOE''), the Amex will not automatically execute broker-dealer orders against orders residing in the limit order book, but instead, such broker-dealer orders will be routed to the AODB for manual execution. The PCX and CBOE both prohibit broker-dealer orders from an automatic execution against orders residing in the limit order book. Accordingly, at the PCX and CBOE broker-dealer orders are required to be re-routed to a floor broker for representation in the trading crowd in order to interact with orders in the limit order book. In addition, the rules of the PCX and CBOE both prohibit broker-dealer orders from being placed in the limit order book. *See* Securities Exchange Act Release Nos. 45032 (November 6, 2001), 66 FR 57145 (November 14, 2001) (SR–PCX–00–05) and 45967 (May 20, 2002), 67 FR 37888 (May 30, 2002) (SR–CBOE–2002–22).

[9] This would provide the Floor Committee with the discretion to permit automatic ''step-up'' for eligible Auto-Ex broker-dealer orders or distinguish between public customer orders and eligible broker-dealer orders.

[10] Telephone call between Jeffrey P. Burns, Assistant General Counsel, Amex and Jennifer Colihan, Special Counsel, Division, Commission, on August 13, 2002.

[11] This prohibition does not apply to a joint account maintained solely for effecting bona fide arbitrage or to any purchase or sale by a specialist or odd-lot dealer for any joint account permitted by Amex Rules 175(b) or 203.

[12] Telephone call between Jeffrey P. Burns, Assistant General Counsel, Amex and Jennifer Colihan, Special Counsel, Division, Commission, on August 13, 2002.

[13] Commentary .03 to Amex Rule 950(c) provides an exception for orders for the account of a member or broker-dealer, which establish or increase a position.

[14] 15 U.S.C. 78i.

brokerage firm and the brokerage firm routed the order to the Amex where it was either automatically executed or routed to the AODB. In either case, the ROT will have violated Amex Rule 111(c). Likewise, if the ROT were trading in person for a joint account in that situation, and that same ROT initiated the order on behalf of the same joint account which order was then routed to the Amex for execution then that ROT would have violated Amex Rule 111(c) and Amex Rule 103(b), which provide a similar prohibition on concurrent representation when a ROT is trading in a joint account. In addition, if a ROT enters an order for his own account with a brokerage firm, and the order is routed to the Amex where it is executed against the same ROT's account, there will be a possible ''wash sale'' rule violation regardless of whether the trade was subsequently nullified.

The Exchange believes that the proposal is consistent with the Commission's approval of the Options Intermarket Linkage Plan (the ''Linkage Plan'').[15] Although the Linkage Plan limits access to eligible market makers on behalf of public customer orders and market maker and specialist principal accounts, the Commission in the Linkage Plan Release indicated its support for broader access between options markets, *i.e.* non-market maker broker-dealers.[16] The Exchange submits that by potentially permitting all broker-dealers to utilize Auto-Ex, the instant proposal furthers the goals of a national market system by assuring that quotes can be promptly accessed by *all* market participants.

The Exchange believes that the proposed rule change to permit the automatic execution of all broker-dealer orders, subject to Floor Committee approval, is a legitimate means for the Amex to compete for orders for the accounts of Competing Market Makers, as well as other broker-dealers. The Exchange notes that the CBOE, PCX, and the Philadelphia Stock Exchange, Inc. (''Phlx'') all have the ability to automatically execute broker-dealer orders in varying degrees.[17]

2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5),[19] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by providing broker-dealers access to the Exchange's Auto-Ex system. The Exchange believes that this should provide additional incentives for Amex market participants to quote competitively, and in turn, should result in competitive pricing and enhanced liquidity on the Exchange and the options markets. In addition, the Exchange further represents that the proposed rule change is consistent with section 11(a) of the Act[20] and Rule 11a2–2(T) thereunder.[21]

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

The Exchange does not believe that the proposed rule change will impose any 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 solicited or received with respect to the proposed rule change.

III. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 Amex. All submissions should refer to File No. SR-Amex-2002–57 and should be submitted by October 8, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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.[22] In particular, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act[23] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.[24]

The Commission finds that it is consistent with the Act to allow broker-dealer orders to be eligible for automatic execution through the Exchange Auto-Ex system, subject to the approval for the Floor Committee, and limitations on dual representation and wash sales. The Commission believes that the proposal should allow the Exchange to improve the efficiency with which orders for the accounts of broker-dealers are executed. By providing prompt execution for broker-dealer orders, the proposal also may help attract broker-dealer options orders to the Exchange, and thus help improve the depth and liquidity of the Exchange's options market. Further, the Commission notes that the Amex represented that Auto-Ex has sufficient capacity to handle the processing of the potential increased order flow.[25]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date

[15] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000)(''Linkage Plan Release'').

[16] *Id. See also* Amex Rule 940 (Interim Options Linkage Program) and Securities Exchange Act Release No. 44271 (May 7, 2001), 66 FR 26887 (May 15, 2001).

[17] *See supra* note 8. The Phlx also received approval on a six-month pilot basis permitting off-floor broker-dealer orders to have electronic access to the specialist's limit order book and automatic execution under certain conditions. *See* Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78k(a).

[21] 17 CFR 240.11a2–2(T).

[22] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] The Exchange submitted a letter to the Division representing that the proposal is consistent with section 11(a) of the Act and Rule 11a2–2(T) under the Act. *See* letter to Catherine McGuire, Chief Counsel, Division, Commission, from Jeffrey P. Burns, Assistant General Counsel, Amex, dated June 27, 2002. In response to the Exchange's request, Commission staff has provided interpretive guidance to the Exchange under section 11(a) of the Act, 15 U.S.C. 78k(a). *See* letter from Paula R. Jenson, Deputy Chief Counsel, Division, Commission, to Jeffrey P. Burns, Assistant General Counsel, Amex, dated July 9, 2002.

[25] Telephone call between Jeffrey P. Burns, Assistant General Counsel, Amex and Jennifer Colihan, Special Counsel, Division, Commission, on August 13, 2002.

of publication of the notice thereof in the **Federal Register**. CBOE, Phlx, and PCX all permit, to some extent, broker-dealer orders to be executed on their automatic execution systems. Accordingly, the Commission believes that no new issues are being raised by Amex's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with sections 6 and 19(b) of the Act.[26]

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR-Amex-2002–57) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23531 Filed 9–16–02; 8:45 am]

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[26] 15 U.S.C. 78f and 78s(b).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46483; File No. SR–Amex–2002–47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the American Stock Exchange LLC Relating to Non-Member Fees for Transactions in Nasdaq Securities Traded on an Unlisted Basis

September 10, 2002.

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 June 3, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt transaction fees for non-member trades in Nasdaq securities admitted to dealings on an unlisted basis. The text of the proposed revision to the Exchange's fee schedule is below. Additions are italicized.

* * * * *

Floor Fees through Registration and IDC Fees (No change)

Equity Fees

Amex Listed Company Equity Fee Schedule (No change)

Nasdaq UTP Equity Fee Schedule

Non-Member Competing Market Maker trades: $.15 per 100 shares

Non-Member Customer trades: $.15 per 100 shares

Notes:

1. A ''competing market maker'' is defined as a specialist or market maker registered as such on a registered stock exchange (other than the Amex) or on Nasdaq, or a market maker bidding and offering over-the-counter, in an Amex traded security.

2. The term ''customer'' includes any market participant other than a ''competing market maker.''

3. The transaction charge for crosses is subject to a maximum charge of $50 per side.

Amex Exchange Traded Funds Fee Schedule (No change)

Bond Charges through Other Fees (No change)

* * * * *

(b) Not applicable.

(c) Not applicable.

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 Amex included statements concerning the purpose of, and the 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 Amex 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 Exchange is implementing a program to trade Nasdaq securities on an unlisted basis. The Exchange, accordingly, is implementing a separate fee schedule for transactions in Nasdaq securities admitted to dealings so that the Amex can be competitive with other market centers that trade Nasdaq securities. The proposed fees are in line with similar fees charged by other market centers for transactions in Nasdaq securities.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[5] in general and furthers the objectives of Section 6(b)[6] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its member, issuers and other persons using its facilities.

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

The proposed fee change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On June 11, 2002, Amex filed Amendment No. 1 to clarify that the $50.00 cap on transaction charges for cross trades applies to each side of the trade. On August 27, 2002, Amex filed Amendment No. 2 to reduce transaction fees for non-member competing market makers from $0.40 per 100 shares to $0.15 per 100 shares.

[4] *See* Securities Exchange Act Release No. 46484 (September 10, 2002), which implements these same fees for members.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).