

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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at <http://www.nsc.com>. 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-NSCC-2005-02 and should be submitted on or before May 11, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51545; File No. SR-NYSE-2005-24]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Definition of Research Analyst in Rule 344 (Research Analysts and Supervisory Analysts) and Rule 472 (Communications With the Public)

April 14, 2005.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Exchange Act" or the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on April 1, 2005, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The NYSE filed the

proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposed rule change effective upon filing with the Commission. 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 Exchange hereby proposes an amendment to Rule 344 (Research Analysts and Supervisory Analysts) and Rule 472 (Communications with the Public) to amend the definition of "research analyst" in the respective Rules to include "associated persons."

Below is the text of the proposed rule change. Proposed new language is italicized.

#### Rule 344. Research Analysts and Supervisory Analysts

Research analysts and supervisory analysts must be registered with, qualified by, and approved by the Exchange.

Adopted: June 18, 1964.

#### SUPPLEMENTARY MATERIAL:

.10 For purposes of this Rule, the term "research analyst" includes a member, allied member, *associated person* or employee who is primarily responsible for the preparation of the substance of a research report and/or whose name appears on such report. Such research analysts must pass a qualification examination acceptable to the Exchange.

.11—No Change.

.12 For purposes of this Rule, the term "*associated person*" is defined as a natural person engaged in investment banking, or a securities or kindred business, who is directly or indirectly controlling or controlled by a member or member organization, whether or not any such person is registered, applying for registration or exempt from registration with the NYSE.

#### Rule 472. Communications With the Public

Approval of Communications and Research Reports

(a)—.30—No Change.

.40 For purposes of this Rule, the term "research analyst" includes a member, allied member, *associated person* or employee of a member or member organization primarily responsible for, and any person who reports directly or indirectly to such research analyst in connection with, the preparation of the substance of a research report whether

or not any such person has the job title of "research analyst."

For purposes of this Rule, the term "household member" means any individual whose principal residence is the same as the research analyst's principal residence. Paragraphs (e)(1), (2), (3), (4)(i), (ii), (iii), (iv) and (v), (k)(1)(iii)b., c., and (k)(2)(i)b. and e. apply to any account in which a research analyst has a financial interest, or over which the research analyst exercises discretion or control, other than an investment company registered under the Investment Company Act of 1940. The trading restrictions applicable to research analysts and household members (*i.e.*, paragraphs (e)(1), (2), (3), (4)(i), (ii), (iii), (iv) and (v)); do not apply to a "blind trust" account that is controlled by a person other than the research analyst or research analyst's household member where neither the research analyst nor household member knows of the account's investments or investment transactions.

.50—.120—No Change.

.130 For purposes of this Rule, the term "*associated person*" is defined as a natural person engaged in investment banking, or a securities or kindred business, who is directly or indirectly controlling or controlled by a member or member organization, whether or not any such person is registered, applying for registration or exempt from registration with the NYSE.

#### 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 Exchange 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 Exchange 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 proposing to amend its definition of "research analyst" to include "associated persons" in order to cover natural persons who control or are under the control of members and member organizations.

*Background.* On May 10, 2002 and July 29, 2003, the Commission

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 15 U.S.C. 78a *et seq.*

<sup>4</sup> 17 CFR 240.19b-4.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

approved, among other things, amendments to Exchange Rules 344 and 472. The amendments were promulgated to address the issue of research analysts' conflicts of interest.<sup>6</sup>

*Proposed Amendments.* Proposed Rules 344.10 and 472.40 would be amended to include "associated persons" to the group of persons included under the definition of "research analyst." In addition, proposed Rule 344.12 and 472.130 would include a definition of the term "associated person."

As proposed, an "associated person" is defined as a natural person engaged in investment banking, or a securities or kindred business, who is directly or indirectly controlling or controlled by a member or member organization, whether or not any such person is registered, applying for registration or exempt from registration with the NYSE (see proposed Rules 344.12 and 472.130).

#### (2) Statutory Basis

The statutory basis for this proposed rule change is section 6(b)(5)<sup>7</sup> of the Exchange Act. Under section 6(b)(5), the rules of the Exchange must be designed, among other things, to foster cooperation and coordination with persons engaged in regulating transactions in securities. Adopting this amended definition will provide for greater uniformity between the Exchange and NASD rules and facilitate member firm compliance with these rules.<sup>8</sup>

#### 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 not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

<sup>6</sup> See Securities Exchange Act Release No. 48252 (July 29, 2003), 68 FR 45875 (August 4, 2003) (SR-NYSE-2002-49) and Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34969 (May 16, 2002) (SR-NYSE-2002-09).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> NASD Rule 2711 (Research Analysts and Research Reports) defines "research analyst" to mean the associated person who is primarily responsible for, and any associated person who reports directly or indirectly to such a research analyst in connection with, preparation of the substance of a research report, whether or not any such person has the job title of "research analyst."

### 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) does not 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 Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> 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.

The Exchange has requested that the Commission waive the 5-day pre-filing notice. The Commission believes that waiving the five-day pre-filing requirement for this proposed rule change is consistent with the protection of investors and the public interest. In addition, in light of the Commission's approval of NASD Rules 1050 and 2711, which include "associated persons" within the purview of the definition of "research analyst," the April 4, 2005 deadline for satisfaction of the Research Analyst Qualification Examination Requirement,<sup>11</sup> and the fact that the Exchange does not expect this proposed amendment to be controversial, as it is a conforming change, the Exchange has requested that the Commission waive the 30-day operative period requirement. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective upon filing on April 1, 2005.<sup>12</sup> Waiving the 30-day operative period would allow the Exchange to work in concert with NASD

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> Research analysts, as defined in Exchange Rule 344.10, must be registered with, qualified and approved by the Exchange, by taking the Research Analyst Qualification Examination (Series 86/87 Examination). The registration and qualification requirement became effective March 30, 2004. Candidates who have been functioning as research analysts as of the effective date of March 30, 2004, and submitted a registration application to NASD, on behalf of the CRD, by June 1, 2004, have been given until April 4, 2005, to meet the qualification requirements.

<sup>12</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

to provide an exemption from the Research Analyst Qualification Examination (Series 86 and 87) for certain research analysts employed by foreign affiliates of a member or member organization who contribute to the preparation of a member's research reports.<sup>13</sup>

### 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2005-24 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-NYSE-2005-24. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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

<sup>13</sup> See SR-NYSE-2005-25 and SR-NASD-2005-043.

available publicly. All submission should refer to File Number SR-NYSE-2005-24 and should be submitted on or before May 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51544; File No. SR-Phlx-2005-03]

### Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to System Changes to the Exchange's Automated Options Market (AUTOM) System

April 14, 2005.

#### I. Introduction

On January 10, 2005, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to reflect system changes to the Exchange's Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X) that are intended to increase the number of orders that are handled and executed automatically. On March 9, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on March 16, 2005.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended, on an accelerated basis.

#### II. Description of the Proposal

The Exchange proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X), to reflect system changes to AUTOM that are intended to increase the number of orders that are

handled and executed electronically on the Exchange and to specify when orders that are not executed automatically on the Exchange would be routed through the Intermarket Option Linkage ("Linkage").<sup>5</sup>

Proposed Exchange Rule 1080(c)(v) provides that if the Exchange receives a market order that is not eligible for automatic execution when any of the conditions described in Exchange Rule 1080(c)(iv) exist, such market order, if not already executed manually by the specialist, would be executed automatically in two situations. First, if a market order has not already been executed manually by the specialist, it would be automatically executed against a limit order on the limit order book or a quotation that becomes the national best bid or offer ("NBBO") while the market order is pending. Second, a market order that is being handled manually by the specialist would be automatically executed against an inbound limit order or quotation priced at or better than the NBBO.

Under proposed Exchange rule 1080(c)(vi), when the Exchange's disseminated quotation is not the NBBO, marketable public customer limit orders would be exposed to the trading crowd and to participants in Phlx XL for a period of three seconds following receipt. At the end of this three second exposure period, if the Exchange's disseminated price is still not the NBBO, any unexecuted contracts remaining in such an order would be automatically sent as Principal Acting as Agent ("P/A") Order<sup>6</sup> through the Linkage to an exchange whose disseminated price is the NBBO. If at the end of the three-second exposure period the Exchange's disseminated price is the NBBO, any unexecuted contracts remaining in the marketable public customer limit order would be automatically executed on the Exchange up to the Exchange's disseminated size. Any remaining contracts then would be sent as P/A Order(s) to the exchange(s)

<sup>5</sup> See Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan"), Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) (Amendment to Linkage Plan to Conform to the Requirements of Securities Exchange Act Rule 11Ac1-7; 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (Notice of Phlx Joining the Linkage Plan); and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Approval of the Linkage Plan).

<sup>6</sup> A P/A Order is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent. See Exchange Rule 1083(k)(i).

displaying the NBBO. If the marketable public customer limit order is canceled during the three-second period, no P/A Order would be sent and the marketable public customer limit order would not be executed.

Proposed Exchange Rule 1080(c)(vi)(A)(2) would require that a specialist submit prior written instructions to the Exchange regarding the routing of any P/A Orders that the specialist would send through the Linkage.<sup>7</sup> the AUTOM System would route P/A Orders on behalf of the specialist according to these instructions three second after receipt of the marketable public customer limit order if such order is not executed or is partially executed during the three-second period and the Exchange's disseminated price at the end of the three-second period is not the NBBO. In the case of a partial execution during the three-second period, the P/A Order that is routed to the market disseminating the NBBO would be for the size that is equal to the number of contracts remaining in the order.

Under proposed Exchange Rule 1080(c)(vi)(B), marketable limit orders for the proprietary account(s) of a broker-dealer (or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest) received when the Exchange's disseminated quotation is not the NBBO would be automatically cancelled by the AUTOM System. A message indicating the cancellation would be automatically sent to the sender of the order.

Proposed Exchange Rule 1080(i) would automate the handling of market orders to sell when the disseminated bid price is zero. Currently, Exchange Rule 1080(c)(vi)(G) provides that such orders are handled manually by the specialist. Under the proposed rule change, the AUTOM system would automatically convert market orders to sell when the bid price is zero to limit orders to sell with a limit price of \$.05. Such market orders to sell, as well as limit orders to sell, would be placed on the limit order book in price-time priority. In the event that the bid price in the particular series becomes \$.05 or greater, thus establishing a bid price that makes the booked limit orders to sell marketable, such orders to sell at the \$.05 limit price or better would be executed in the order in which they were received (*i.e.*, price-time priority).

<sup>7</sup> The Exchange stated that this requirement enables the specialist to carry out his or her agency responsibilities with respect to P/A Orders submitted through the Linkage.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Amendment No. 1 replaced the original filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 51352 (March 9, 2005), 70 FR 12935.