

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52416; File No. SR-Phlx-2005-26)

September 13, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto to Amend the Exchange's Trade-Through and Locked Markets Rules

On April 26, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to implement Amendment No. 15 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage³ by amending Phlx Rules 1083 and 1086 to add a "trade and ship" exception to the definition of "Trade-Through" and add a "book and ship" exception to the provision relating to locked markets, respectively. On July 21, 2005, the Phlx filed Amendment No. 1 to the proposed rule change.⁴ The proposed rule change, as amended, was published for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option linkage proposed by the American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, and the International Securities Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) ("Linkage Plan"). Subsequently, upon separate requests by the Phlx, the Pacific Exchange, Inc., and the Boston Stock Exchange, Inc., the Commission issued orders to permit these exchanges to participate in the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

⁴ In Amendment No. 1, the Phlx revised the rule text to use terms consistent with Phlx's current rules and the Linkage Plan, and made clarifying changes in the description of the substance of the proposed rule change and the purpose and statutory basis sections.

comment in the Federal Register on August 5, 2005.⁵ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

Under the proposed rule change, a Participant Exchange⁶ could trade an order at a price that is one minimum quoting increment inferior to the national best bid or offer (“NBBO”) if a Linkage Order⁷ is sent contemporaneously to the market(s) disseminating the NBBO to satisfy all interest at the NBBO price. The proposed rule change also would provide that an Eligible Market Maker or other member may book an order that would otherwise lock another market if a Linkage Order is sent contemporaneously to such other market to satisfy all interest at the lock price and only the remaining portion of the order is booked. The Phlx proposes that, under trade and ship, any execution received from the market disseminating the NBBO must (pursuant to agency obligations) be reassigned to the customer order that is underlying the Linkage Order that was sent to trade with the market disseminating the NBBO.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act⁸ and the rules and regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission finds that the

⁵ See Securities Exchange Act Release No. 52175 (July 29, 2005), 70 FR 45480.

⁶ See Phlx Rule 1083(o).

⁷ See Phlx Rule 1083(k).

⁸ 15 U.S.C. 78f.

⁹ In approving this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ 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 a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should help to implement the Linkage Plan by facilitating the ability of Phlx's members to execute their customer orders in a timely manner and potentially could decrease the incidence of Trade-Throughs and locked markets.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-Phlx-2005-26) as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Jonathan G. Katz
Secretary

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).