

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54036; File No. SR-Phlx-2005-61)

June 23, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change, and Amendment Nos. 1 and 2 Thereto, Relating to the Deletion of Certain Exchange Rules

I. Introduction

On October 14, 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to eliminate certain rules that the Exchange believes are obsolete due to changes in the law or the business methods employed by the Exchange. On March 10 and May 1, 2006, respectively, the Exchange submitted Amendment Nos. 1³ and 2⁴ to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on May 18, 2006.⁵ No comments were received regarding the proposal, as amended. This order approves the proposed rule change, as amended.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1, which replaced the original filing in its entirety, made clarifying changes to the proposed rule change and sought to retain Phlx Rules 229 Supplementary Material .07(c)(ii) and 236.

⁴ Amendment No. 2, which replaced the original filing and Amendment No. 1 in their entirety, made general clarifying changes to the proposed rule change and sought to retain Phlx Rule 219, as well as Phlx Rules 229 Supplementary Material .07(c)(ii) and 236. Phlx states that it plans to propose to delete Phlx Rules 219, 229 Supplementary Material .07(c)(ii), and 236 in a future proposed rule change regarding a change to Phlx systems.

⁵ See Securities Exchange Act Release No. 53795 (May 12, 2006), 71 FR 28893 (May 18, 2006) ("Notice").

II. Description of the Proposed Rule Change

Phlx is proposing to remove from its rule book Phlx Rules 129, 241-248, and 923.

Phlx Rule 129: Withdrawal of Orders

Phlx Rule 129 prohibits the withdrawal of an order from the Exchange, at the request of another member, for the purpose of the purchase or sale of the securities outside of the Exchange.

Phlx Rules 241-248: Rules for Special Offerings

Phlx Rules 241-248 concern special offerings of securities on the Exchange. In 1942, the Commission amended Rule 10b-2 under the Act to permit an exemption for special offerings under a plan filed with the Commission by an exchange.⁶ Phlx's Plan, contained in Phlx Rules 241-248, permits special offerings, at a fixed price and for a fixed period of time, on the Exchange where the quantity of stock involved cannot be absorbed in the regular auction market within a reasonable time and at a reasonable price. Phlx Rules 241-248 permit a person making a special offering to pay a special commission to a broker for a purchasing customer.

Generally, Phlx Rules 241-248 specify a minimum share size of 1,000 shares, with a value of \$25,000. According to the Exchange, by today's standards, 1,000 shares of stock with a value of \$25,000 is not a quantity of stock that cannot readily be absorbed in the regular auction market. Phlx Rules 241-248 predate Phlx crossing Rule 126, which has special cross provisions for Trust Shares of 25,000 shares or greater and all securities of 5,000 shares or greater, and PACE, which is described in Phlx Rule 229 and which

⁶ Phlx filed its plan in 1943. See Securities Exchange Act Release No. 3487 (September 23, 1943).

sets minimum automatic execution sizes for securities on the system of 599 shares, noting that specialists may set higher levels.

In proposing the rescission of Rule 10b-2, the Commission indicated that it believed that the significant changes that have taken place in the securities markets since Rule 10b-2's adoption, and the coverage of other anti-fraud and anti-manipulation provisions of the federal securities laws, made it appropriate to rescind Rule 10b-2.⁷ The Exchange now proposes to delete Phlx Rules 241-248, the plan adopted in response to Rule 10b-2, because it believes that these rules are obsolete as the Commission rescinded Rule 10b-2 and the Exchange has not utilized Phlx Rules 241-248 in the past twenty years.⁸

Phlx Rule 923: Member Officers

Phlx Rule 923 requires members associated with member corporations to be officers and voting stockholders of those member corporations, noting that the Exchange may waive the voting stock requirement of the rule.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁹ which requires, in

⁷ See Securities Exchange Act Release No. 32100 (April 2, 1993), 58 FR 18145 (April 8, 1993).

⁸ See also Securities Exchange Act Release No. 32822 (August 31, 1993), 58 FR 47484 (September 9, 1993) (SR-NYSE-93-20) (rescinding New York Stock Exchange ("NYSE") Rule 391, which is similar to Phlx Rules 241-248).

⁹ 15 U.S.C. 78f(b)(5).

part, 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.¹⁰

As noted above, the Exchange proposes to clarify the Exchange's rules by eliminating provisions that no longer are necessary and are obsolete. The Commission believes these changes are consistent with the Act. With respect to the deletion of Phlx Rule 129, the Exchange notes that currently members, in exercising their duty to obtain best execution for orders entrusted to them, may remove orders from the Exchange and seek execution in other venues. With respect to the proposed deletion of Phlx Rules 241-248, the Commission notes that these rules are substantially similar to former NYSE Rule 391, which was rescinded in 1993.¹¹ In approving the NYSE's deletion of this rule, the Commission noted that it was appropriate for the Exchange to rescind NYSE Rule 391 in light of the rescission of Rule 10b-2.

Moreover, the Commission believes that it is consistent with the Act for Phlx to delete Phlx Rule 923, to provide member corporations additional flexibility to choose whom in their company to employ as members of the Exchange. According to the Exchange, this rule was adopted at least fifty years ago, when most member corporations were small regional companies. The purpose of this rule at that time, according to the Exchange, may have been to provide an additional means of obtaining security for the debts of the member corporation by requiring that the members who were trading the

¹⁰ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ See Securities Exchange Act Release No. 32822, supra note 8.

securities also be officers and/or owners of the corporation. Today, Phlx has other rule-based means to require adequate financial security for the debts of member corporations and for ensuring that member corporations are generally financially solvent.¹²

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-Phlx-2005-61), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Nancy M. Morris
Secretary

¹² See e.g., Phlx Rule 909 (requiring member organizations to provide and maintain security for any claims owed to the Exchange and other members and member organizations); and Phlx Rule 924 (making the member organization liable for the fees, fines, dues, penalties and other amounts imposed by the Exchange on its members; this provision applies regardless of the officer or ownership status of the member). According to Phlx, member corporations are a subset of member organizations. Therefore, Phlx Rules 909 and 924 apply to member corporations.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).