

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53795; File No. SR-Phlx-2005-61)

May 12, 2006

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 14, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. On March 10, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> Phlx filed amendment No. 2 to the proposed rule change on May 1, 2006.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

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

<sup>3</sup> 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.

<sup>4</sup> 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.

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

The Phlx, pursuant to Section 19(b)(1) of the Act<sup>5</sup> and Rule 19b-4 thereunder,<sup>6</sup> proposes to delete Phlx Rules 129, 241-248, and 923.

The text of the proposed rule change, as amended, appears below. Additions are underlined; deletions are [bracketed].

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**Rule 129 [Withdrawal of Orders] Reserved**

[The withdrawal from the Floor of the Exchange of an order for the purchase or sale of securities, or any part thereof, at the request of another member of the Exchange, for the purpose of the purchase or sale of the securities so withdrawn outside of the Exchange is prohibited.]

**Rule 241 [Special Offerings] Reserved**

[Notwithstanding the provisions of other Rules, which might otherwise apply, the Exchange may, subject to the conditions specified in this Rule and to compliance with the provisions contained herein, permit a "Special Offering" (as herein defined) to be made through the facilities of the Exchange, provided that the Exchange (after consulting and with the concurrence of a Governor who is active on the Floor of the Exchange) shall have determined that the regular market on the Exchange cannot, within a reasonable time and at a reasonable price or prices, absorb the particular block of a security which is to be the subject of such Special Offering. In making such determination the following factors shall be taken into consideration, via:

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<sup>5</sup> 15 U.S.C. 78s(b)(1).

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

- (a) price range and the volume of transactions in such security on the Floor of the Exchange during the preceding six months;
- (b) attempts which have been made to dispose of the security in the regular market on the Floor of the Exchange;
- (c) the apparent past and current interest in such security in such regular market on the Floor; and
- (d) the number of shares or bonds and the current market value of the block of such security proposed to be covered by such Special Offering.

Except in special circumstances a Special Offering will not be permitted unless the offering involves at least 1,000 shares of stock with an aggregate market value of not less than \$25,000, or \$15,000 par value in bonds with an aggregate market value of not less than \$10,000.]

**Rule 242 [Definition] Reserved**

[A Special Offering is defined as an offering (designated as a fixed price offering) by one or more members or member organizations acting for his or its own account or for the account of one or more other persons, for the sale of a block of a security dealt in on the Exchange through the facilities of the Exchange at a price not in excess of the last sale of such security or the current offer of such security in the regular market on the Floor of the Exchange, whichever is the lower, but equal to or higher than the current bid for such security in such market, whereby the offer or agrees to pay a special commission to such members and member organizations as may accept all or any part of such Offering for the account of his or its customers; provided, that the security which is the subject of such Offering is a security to which the exemption afforded by Rule 240.10b-2(d)(1) issued by

the Securities and Exchange Commission, and such amendments thereto as have been or may be from time to time adopted, is available at the time of such Offering.]

**Rule 243 [Conditions] Reserved**

[No Special Offering, as provided in these Rules shall be made unless each of the following conditions is complied with, via:

(a) The person for whose account such Special Offering is to be made shall at the time of such Offering be the owner of the entire block of the security so to be offered, except that, for the purpose of stabilizing, there also may be sold for such person's account, or for the account of any member organization offering the block of security on his behalf, as part of the Special Offering, an amount not to exceed 10% of the shares or bonds owned and originally offered in the Special Offering by such person.

(b) The person for whose account such Special Offering is to be made shall include within the Offering all of the security which he then intends to offer within a reasonable time, and there shall be furnished to the Exchange before the Offering is made a written statement by the offeror to that effect or a written statement by his broker stating that the broker has been so advised by the offeror.

(c) A Special Offering shall be automatically suspended as long as an offering exists "regular way" at a price which would permit a purchase at a lower net cost than in the Special Offering. Unless otherwise specifically exempted by the Exchange, every Special Offering shall remain open for a minimum period of 15 minutes, inclusive of any period during which it is suspended by operation of the above provision. A Special Offering which has not been completed in the 15 minute minimum period shall not be withdrawn before completion without the approval of the Exchange.

(d) The person for whose account such Special Offering is made shall agree that during the period such offering is open, he will not offer in the regular market on the floor of the Exchange any shares or bonds of the security which is the subject of such Special Offering, unless the prior permission of the Exchange is first obtained.

(e) The special commission referred to in Rule 242 shall not exceed \$1 per share on purchases at a price of \$50 or less per share, or 2% of the purchase price on purchases at a price in excess of \$50 per share. In the case of bonds such commission shall not exceed 2 1/2 % of the purchase price.

(f) No member or member organization shall directly or indirectly receive any part of the special commission referred to in Rule 242 in connection with any purchase for his or its own account or the account of a partner thereof or a stockholder therein or for the account of any other member or member organization or partner thereof or stockholder therein, made pursuant to a Special Offering.

(g) A Special Offering shall not be made unless it can be accepted in a lesser amount or amounts than the total of the securities offered.

(h) A Special Offering shall be made for acceptance in round lots or in odd lots, without preference, and in the case of an odd-lot purchase no differential shall be added to the gross purchase price of the Special Offering.

(i) When buying orders in a Special Offering exceed the amount available in the offering, the offered security will be allocated in reasonably proportionate amounts.]

**Rule 244 [When Effective] Reserved**

[A Special Offering, when approved, shall become effective upon announcement by the Exchange on the tape of the terms and conditions of such Offering.]

**Rule 245 [Terms of Offering on Tape] Reserved**

[The terms of a Special Offering shall be printed on the tape before it is effective, with a statement, if such be the fact, that stabilizing transactions have been effected or are contemplated and that it is intended to over allot as permitted by Rule 243 (a).

Transactions effected pursuant to a Special Offering shall when feasible be printed currently on the tape, and the tape shall show the gross price and the special commission in a legend such as: "SP OFF 100 XYZ 40 COM .50", as well as the number of orders involved in such transaction where more than one order is involved; and after the close of the market, any unprinted remainder of such transactions executed during the day shall be so printed. When the offering is terminated, an announcement to that effect shall be printed on the tape; and when the intention to stabilize is terminated, such fact shall be announced on the tape, together with a statement that stabilizing transactions have been effected, if such be the fact.]

**Rule 246 [Odd Lots] Reserved**

[Transactions effected pursuant to a Special Offering shall not elect the execution of any outstanding "regular way" odd-lot orders.]

**Rule 247 [Authorization] Reserved**

[(a) A Special Offering may be approved and made only if the person or persons for whose account it is proposed to be made shall have specifically authorized such Offering and its terms.

Disclosure

(b) A member organization effecting for the account of a customer a purchase pursuant to a Special Offering shall confirm such transaction to such customer at the offering price

and shall not charge to or collect from such customer any commission on account of such transaction.

The confirmation by a member organization to a buyer or seller in a Special Offering shall state in full the terms and conditions of the Special Offering. The confirmation to a buyer shall state at least:

- (1) That the purchase was part of a Special Offering;
- (2) That no commission is to be charged to the customer;
- (3) That the seller is to pay a special commission to the member organization, if such be the fact;
- (4) The amount of such special commission;
- (5) The information printed on the tape regarding stabilizing transactions or the intention to stabilize; and
- (6) The nature of the member organization's interest in the Special Offering, if any, other than its interest as a recipient of the special commission.

(c) A member organization soliciting purchase orders for execution pursuant to a Special Offering shall advise the person so solicited of the terms and conditions of such Offering before effecting any transaction for such person pursuant thereto. Such disclosure shall include at least the items described in paragraphs (1) to (6) of Rule 247 (b).

(d) A member organization with an order for the purchase of a security which is the subject of a Special Offering shall effect such purchase in the regular market whenever a "regular way" offering is available which would permit such purchase at a lower net cost than in the Special Offering. Every order for purchase in a Special Offering shall be accepted pursuant to the above condition.]

**Rule 248 [Information Regarding Special Offerings] Reserved**

[It is not the purpose of these Rules to supersede the auction market or supplant approved secondary distributions, but to provide means for the handling of blocks of securities dealt in on the Exchange, through the facilities of the Exchange, where such blocks, under current conditions, cannot readily be absorbed in the auction market within a reasonable time and at a reasonable price.

Rules 241-248 are intended primarily to provide for Special Offerings on an agency basis by members or member organizations on behalf of their non-member customers.

However, the Rules do not prohibit a Special Offering by a member or member organization for his or its own account.

.01 Preliminary Information Required. --The broker for the offeror will be required to furnish the following information to the Exchange prior to the announcement of the Special Offering on the tape:

- (a) Name of the security and ticker symbol.
- (b) Number of shares or bonds.
- (c) Special Offering price.
- (d) Special commission.
- (e) Name of the offeror.
- (f) Written assurance of the offeror, or of the broker upon advice from the offeror, that the shares or bonds contained in the Offering are all of the security which he then intends to offer within a reasonable time, as required in Rule 243 (b).
- (g) Assurance of agreement of offeror to terms of Offering.
- (h) Statement as to whether stabilizing operations will be engaged in to facilitate Special



Offering.

(i) Statement as to whether the offeror or his agent intends, for the purpose of stabilizing, to sell shares or bonds in the Special Offering in excess of that owned and included in the original offer as permitted by Rule 243 (a).

(j) Statement that the shares or bonds covered by the application do or do not require registration under the Securities Act of 1933, together with explanation thereof.

This information should be given to the Exchange as soon as possible in advance of the time it is proposed to make the Special Offering. Announcement will not be made on the tape of the Special Offering (and the Special Offering thus cannot become effective) until the Exchange has the requisite information and has approved it.

.02 Ownership. --The offeror in a Special Offering must be the bona fide owner of the entire block of security offered, net of any short account the offeror may have in such security. Sales for the purpose of stabilizing as permitted by Rule 243 (a) are excepted.

.03 "Piecemeal." --"All or None" Offerings. "Piecemeal" or successive offerings of the same security by the same offeror, and offerings on an "all-or-none" basis, will not be permitted.

.04 Minimum Period of Offering. --Rule 243 (c) provides in part that unless otherwise specifically exempted by the Exchange, every Special Offering shall remain open for a minimum period of 15 minutes. An exemption from this minimum requirement is specifically given to any offering which has been announced on the Exchange ticker tape at least one hour before the offering becomes effective. An offering so exempted from the minimum 15 minute requirement shall not be closed without the approval of the Exchange.

.05 Other Offers by Offeror. --It should be noted that, under Rule 243 (d), an offeror may not, while his Special Offering is open, offer any shares or bonds of the same security in the regular auction market, without prior permission of the Exchange.

.06 Orders after Close. --Orders accumulated after the close shall be completed on the Floor of the Exchange at the opening of the next market session.

.07 Handling of Special Offering Transactions. --Purchases against Special Offerings must be completed on the Floor of the Exchange at the post where the security is dealt in. The handling of the Floor end of the business, on either the purchase or the offering side, may be entrusted to a Floor broker or in the same manner as in the case of regular commission orders. In reference to Rule 247 attention is directed to the fact that in connection with a Special Offering, the broker for the buyer is acting in an agency capacity and the agency obligation to buy at the most advantageous cost to the customer shall be observed.

.08 Stabilizing. --The right to sell an amount not to exceed 10 per cent of the number of shares or bonds owned and originally offered in the Special Offering, for the purpose of stabilizing and as part of a Special Offering, is subject to the prior approval of the Exchange. Stabilizing operations in connection with Special Offerings must be discussed in advance with the staff of the Exchange.

.09 Stop Orders --Odd-lot Orders. --Transactions effected pursuant to Special Offerings shall not elect stop-orders or open odd-lot orders for execution in the regular market.

.10 Confirmations. --The information to be furnished on confirmations in conformity with Rule 247 (b) may be inserted on the face of an appropriate form of confirmation in type no smaller than other surrounding type or it may appear on the back of such

confirmation in the same type, provided the face of the confirmation contains the following legend in the type illustrated as follows:

**"IMPORTANT --SEE REVERSE SIDE"**

The information may also be attached and made a part of an appropriate form of confirmation in type no smaller than 8 point.

.11 Reports. --The applicant shall submit to the Exchange at the close of each day a report of all transactions in the offered security effected for the account of any person having an interest, as seller or as agent, offering the block of the security on the seller's behalf, in the Special Offering. Such reports shall cover the period beginning with the date of commencement of the offering or the stabilizing, whichever is earlier, and ending with the date on which the short position has been covered or the Special Offering account has been terminated, whichever is later.]

**Rule 923 [Member Officers] Reserved**

[A member of the Exchange shall be an officer of the member organization that is a corporation. He shall own and continue to own such an interest in the voting stock of said corporation as shall be acceptable to the Committee; provided that the Committee may waive such requirement of voting stock ownership, if the voting stock ownership is otherwise satisfactory to the Committee.]

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx 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. Phlx 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 purpose of the proposed rule change, as amended, is to update Phlx's rules to remove rules that, according to the Exchange, are no longer applicable due to changes in the law or methods of business on the Exchange.

**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. The Exchange speculates that this rule was possibly adopted in the 1930's or 1940's to keep orders presented on the Phlx market subject to the regulatory protections available to them on the Exchange. Since that time, the over the counter markets have become more sophisticated. Currently, it is understood that members, in exercising their agency duty to obtain best execution for orders entrusted to them, may remove orders from the Exchange and seek execution in other venues. Therefore, the Exchange believes that deletion of Phlx Rule 129 should assist members in fulfilling their best execution obligations.

**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<sup>7</sup> to permit an exemption for

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<sup>7</sup> 17 CFR 240.10b-2.

special offerings under a plan filed with the Commission by an exchange.<sup>8</sup> 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 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, such as Rules 10b-5<sup>9</sup> and 10b-6<sup>10</sup> under the Act, made it appropriate to rescind Rule 10b-2. The Exchange now proposes to delete Phlx

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<sup>8</sup> Phlx filed its plan in 1943. See Securities Exchange Act Release No. 3487 (September 23, 1943).

<sup>9</sup> 17 CFR 240.10b-5.

<sup>10</sup> 17 CFR 240.10b-6.

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.<sup>11</sup>

### **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. 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 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 securities also be officers and/or owners of the corporation. Today, the 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. Phlx Rule 909 requires member organizations to provide and maintain security for any claims owed to the Exchange and other members and member organizations.<sup>12</sup> Phlx Rule 924 complements Phlx Rule 909 by 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. Finally, Rule 15c3-1 under the Act<sup>13</sup> requires certain minimum net capital requirements for

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<sup>11</sup> Similarly, the New York Stock Exchange (“NYSE”) rescinded a rule (NYSE Rule 391) similar to Phlx Rules 241-248 in 1993 in response to the Commission’s rescission of Rule 10b-2. See Securities Exchange Act Release No. 32822 (August 31, 1993), 58 FR 47484 (September 9, 1993) (SR-NYSE-93-20).

<sup>12</sup> Phlx notes that member corporations are a subset of member organizations. Therefore, Phlx Rules 909 and 924 apply to member corporations.

<sup>13</sup> 17 CFR 240.15c3-1.

broker-dealers, which include Exchange member corporations. Therefore, Phlx does not believe that the requirement in Phlx Rule 923 serves to protect the Exchange and believes deletion gives a member corporation maximum flexibility to choose whom in their company to employ as members of the Exchange.

2. Statutory Basis

The Exchange believes that its proposal, as amended, is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest by updating the Exchange's rules.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any 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

Written comments on the proposed rule change were neither solicited nor received.

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<sup>14</sup> 15 U.S.C. 78f(b).

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

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 Phlx consents, the Commission will:

- (A) by order approve such proposed rule change, as amended, or
- (B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2005-61 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2005-61. 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 the filing also will be available for inspection and copying at the principal office of the Phlx. 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-Phlx-2005-61 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Nancy M. Morris  
Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).