

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51853; File No. SR-Phlx-2005-41)

June 15, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Providing an Electronic, Auditable Means of Receiving Orders and Cancels to Those Orders

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> notice is hereby given that on June 9, 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 and II below, which Items have been prepared by the Phlx. The Exchange filed the proposed rule change as a “non-controversial” rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal 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 Phlx proposes to create a new system to accept and route orders in System Eligible Securities (defined below) to a receiving member organization (i.e., a floor broker) on the Equity Floor (and in the case of Remote Specialists, only orders in their specialty securities) from sending member organizations (i.e., an order flow provider) who utilize an electronic, commercial order routing system.<sup>4</sup> In addition, the new system would allow the receiving

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

<sup>4</sup> Examples of electronic, commercial order routing system include Lava, BRASS and Macgregor.

member organization to send execution or cancel reports for those orders back to the sending member organization.

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 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. The 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, Proposed Rule Change

1. Purpose

The Exchange represents that the purpose of the proposed rule change is to assist receiving member organizations (i.e., floor brokers) on the Exchange's Equity Floor by providing an electronic, auditable means of receiving orders and cancels to those orders from sending member organizations (i.e., order flow providers).<sup>5</sup> To accomplish this, the Phlx proposes to create a new system for receiving member organizations to receive orders from sending member organizations through an electronic, commercial order routing system (the Exchange's system hereinafter called the "Order Routing System" or "ORS"). The Phlx intends that this Order Routing System will provide an opportunity for receiving member organizations and sending member organizations to accomplish order delivery by means of this new electronic

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<sup>5</sup> Receiving member organizations that are Remote Specialists pursuant to Phlx Rule 461 may receive orders only in securities in which the Remote Specialist is a specialist because of the prohibition in Phlx Rule 461 against remote floor brokerage.

system as an alternative to using the telephone.<sup>6</sup> The Exchange proposes that the ORS would receive orders and present them to the receiving member organization to which they were directed, but would perform no execution of the orders, nor would it interface with PACE, the Exchange's automated order routing, delivery, execution and reporting system for equities.

The ORS would allow a sending member organization to route orders to the receiving member organization in any equity security listed or traded pursuant to unlisted trading privileges<sup>7</sup> on the Exchange<sup>8</sup> ("System Eligible Security"). The orders delivered to the receiving member organization would be available for handling by such receiving member organization. Once in receipt of the order, the receiving member organization could either seek execution for the order on the Phlx or in another venue. The ORS itself would not provide any execution, tape reporting, or clearing<sup>9</sup> functionality. If the receiving member organization would seek to execute an ORS-delivered order on the Phlx, that receiving member organization would need to follow all applicable rules on the Phlx to seek an execution, including the rules of priority, parity and precedence and the creation of an order ticket representing that order.

The ORS would receive the following order types: market, limit, stop, stop limit and market on close. The ORS would provide the receiving member organization the capacity to

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<sup>6</sup> The Exchange notes that receiving member organizations may continue to receive orders from sending member organizations by telephone. This proposed rule change is intended to provide an additional method for receiving member organizations to receive orders.

<sup>7</sup> Unlisted trading privileges are granted to the Exchange under Section 12(f) of the Act. 15 U.S.C. 78l(f).

<sup>8</sup> This is subject to the limitation on Remote Specialists described in note 5, supra.

<sup>9</sup> While the ORS would not provide any clearing functionality itself, receiving member organizations may indicate on the electronic form used to report executions to sending member organizations that a copy of this information be sent to the appropriate accounts at the Stock Clearing Corporation of Philadelphia for clearing purposes. Receiving member organization using this copy of the electronic form would have an opportunity to

report the execution of an order received by the ORS back to the sending member organization that sent the order. In addition, when a receiving member organization receives a cancel to a previously received order, the receiving member organization would need to respond to that cancel with an acknowledgement of the cancel or with a message that it is too late to cancel and an execution report or some combination thereof.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the ORS would provide receiving member organizations that use the system with an electronic record of order receipts and execution or cancel reports sent to sending member organizations relating to those orders or reports. Therefore, the Phlx believes that the ORS could serve as an audit trail and would assist the receiving member organizations in maintaining their required books and records for regulatory purposes and for their own internal management and billing purposes.

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experience more efficient operations and reduce the risk of error by eliminating the need to enter the same information more than once.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

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

Because the 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) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>14</sup> However, Rule 19b-4(f)(6)(iii)<sup>15</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has satisfied the five-day filing requirement. In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay and designate the proposed rule change to become operative on June 30, 2005. The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and the public

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> Id.

interest because it would allow the Exchange and its member organizations to realize the regulatory and operational benefits of this functionality more expeditiously. For the reasons stated above, the Commission designates the proposal to become effective immediately and operative on June 30, 2005.<sup>16</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 the furtherance of the purposes of the Act.

#### 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 an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2005-41 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9309.

All submissions should refer to File Number SR-Phlx-2005-41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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<sup>16</sup> For purposes of accelerating the operative date of this proposal only, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 Section, 100 F Street, NE, Washington, DC 20549. Copies of such 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-2005-41 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Margaret H. McFarland  
Deputy Secretary

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