

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53139; File No. SR-Phlx-2005-67)

January 18, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Maintenance, Retention, and Furnishing of Books, Records, and Other Information Regarding Payment for Order Flow

On November 3, 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”) and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Phlx Rule 760 (Maintenance, Retention and Furnishing of Books, Records and Other Information) to incorporate recent changes to the Exchange’s payment for order flow program. On November 22, 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 December 14, 2005.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Exchange recently amended its payment for order flow program for trades settling on or after October 1, 2005 (“October program”).<sup>5</sup> The Exchange represented that Registered Options Traders who receive electronically-delivered orders directed to them (“Directed ROTs”) may, pursuant to the October program, direct the Exchange to make payments to order flow

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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 provided clarifying language to Phlx Rule 760 and the purpose section of the filing.

<sup>4</sup> Securities Exchange Act Release No. 52903 (December 7, 2005), 70 FR 74082 (December 14, 2005) (SR-Phlx-2005-67).

providers on their behalf.<sup>6</sup> Thus, the Exchange proposed to amend the Supplementary Material to Phlx Rule 760 to clarify that these Directed ROTs would now be required to retain records relating to payment for order flow arrangements.<sup>7</sup> The Exchange also proposed to amend the Supplementary Material to Phlx Rule 760 because the Exchange's current payment for order flow program no longer tracks payments to order flow providers on an option by option basis. In addition, the Exchange noted that specialists and specialist units no longer need to maintain records relating to the use, transfer, and distribution of payment for order flow funds because they would now direct the Exchange to make payments to order flow providers on their behalf. The Exchange further proposed to specifically request that books and records regarding the rate (whether on a per contract or flat fee basis) that is paid to order flow providers and the basis for the amount that Directed ROTs, specialists, and specialist units direct the Exchange to pay to order flow providers be maintained and made available as may be requested by the Exchange.

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.<sup>8</sup> The Commission believes that the proposed rule change, as amended, is

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<sup>5</sup> The October program is in effect as a pilot program that is scheduled to expire on May 27, 2006. See Securities Exchange Act Release No. 52568 (October 6, 2005), 70 FR 60120 (October 14, 2005) (SR-Phlx-2005-58).

<sup>6</sup> The Exchange represented that under previous payment for order flow programs, specialist units requested reimbursement from the Exchange for monies they paid to order flow providers. Pursuant to the October program, the available payment for order flow funds would be disbursed by the Exchange according to the instructions of the specialist units and Directed ROTs.

<sup>7</sup> The Exchange represented that specialists/specialist units are already specifically required to maintain these books and records.

<sup>8</sup> 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).

consistent with Section 6(b)(5) of the Act<sup>9</sup> in that this proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, 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 clarifies the parties that must maintain records relating to payment for order flow arrangements and the nature of the records to be maintained. The Commission also believes that the proposed rule change would assist the Exchange in determining whether its payment for order flow program is being carried out in accordance with the Exchange's requirements.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-Phlx-2005-67), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris  
Secretary

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<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).