**Proposed Rule Change by Philadelphia Stock Exchange**

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<table>
<thead>
<tr>
<th>Initial</th>
<th>Amendment</th>
<th>Withdrawal</th>
<th>Section 19(b)(2)</th>
<th>Section 19(b)(3)(A)</th>
<th>Section 19(b)(3)(B)</th>
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**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

Amending Exchange Rule 760

**Contact Information**

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name: Cynthia  
Last Name: Hoekstra  
Title: Director  
E-mail: cynthia.hoekstra@phlx.com  
Telephone: (215) 496-5066  
Fax: (215) 496-6729

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date: 11/03/2005  
By: Cynthia Hoekstra  
Director

(Title)
If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission’s permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

<table>
<thead>
<tr>
<th>Form 19b-4 Information</th>
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<tbody>
<tr>
<td>The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.</td>
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<tr>
<th>Exhibit 1 - Notice of Proposed Rule Change</th>
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<tbody>
<tr>
<td>The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)</td>
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<tr>
<th>Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications</th>
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<td>Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.</td>
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<tr>
<th>Exhibit 3 - Form, Report, or Questionnaire</th>
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<tbody>
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<td>Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.</td>
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<th>Exhibit 4 - Marked Copies</th>
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<td>The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.</td>
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<th>Exhibit 5 - Proposed Rule Text</th>
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<td>The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.</td>
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1. **Text of the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 proposes 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.

The Exchange recently amended its payment for order flow program for trades settling on or after October 1, 2005 ("October program"). 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 providers on their behalf. Thus, the Exchange proposes to amend Rule 760 to clarify that these Directed ROTs must now retain records relating to payment for order flow arrangements.

The text of Rule 760, as proposed to be amended, is set forth below with new language underlined and deletions bracketed.

**Rule 760.**
**Maintenance, Retention and Furnishing of Books, Records and Other Information**

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3 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 will be disbursed by the Exchange according to the instructions of the specialist units and Directed ROTs.

4 Specialists/specialist units are already specifically required to maintain these books and records.
Every member and member organization shall make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Securities Exchange Act of 1934 and the rules and regulations thereunder. No member or member organization shall refuse to make available to the Exchange such books, records or other information as may be called for under the rules or as may be requested in connection with an investigation by the Exchange.

Supplementary Material: ...

.01 Without limiting the general provisions of Rule 760, such Rule requires Specialists or Specialist Units or Registered Options Traders who request that payments be made to order flow providers as part of the Exchange's payment for order flow program, to make, keep current and preserve all books and records relating to payment for order flow arrangements, including but not limited to all records pertaining to the identity of the order flow providers, the origin, use, transfer, distribution and rates, and the basis for the amounts they have directed the Exchange to pay to order flow providers (whether on a per contract or flat fee basis). Such records should be maintained in such a fashion as to permit the Exchange to track payments to order flow providers on an option by option basis. Such books and records shall be made available as may be requested by the Exchange.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

2. Procedures of the Self-Regulatory Organization

The Executive Committee, pursuant to delegated authority, approved the proposal for filing with the Securities and Exchange Commission ("SEC" or "Commission") on October 26, 2005.

Questions and comments on the proposed rule change may be directed to Cynthia Hoekstra, Director, at (215) 496-5066 or Edith Hallahan, Deputy General Counsel, (215) 496-5179.
3. **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

   a. **Purpose**

      The purpose of this proposal is to update Rule 760 to reflect recent changes to the Exchange’s payment for order flow program, specifically including that Directed ROTs must now retain records relating to payment for order flow arrangements.

   b. **Statutory Basis**

      The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^5\) in general, and furthers the objectives of Section 6(b)(1) of the Act\(^6\) in particular, in that it assists the Exchange in determining and enforcing compliance with its rules (i.e., the specific terms of the Exchange’s payment for order flow program). By enabling the Exchange to verify that the payment for order flow program is being administered in accordance with the terms thereof as approved by the Exchange and set forth in its filing with the Commission, this proposal also promotes just and equitable principles of trade consistent with Section 6(b)(5) of the Act.

4. **Self-Regulatory Organization's Statement on Burden on Competition**

   The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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5. **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.

6. **Extension of Time Period for Commission Action**

   The Exchange does not consent to an extension of the time period for Commission action.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

   Not applicable.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

   The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission

9. **Exhibits**

   1. Notice of proposed rule for publication in the *Federal Register.*
Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\), and Rule 19b-4\(^2\) thereunder, notice is hereby given that on ______________________ 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. 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, pursuant to Section 19(b)(1) and Rule 19b-4 thereunder, proposes 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.

The Exchange recently amended its payment for order flow program for trades settling on or after October 1, 2005 ("October program").\(^4\) Registered Options Traders

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\(^3\) 17 CFR 240.19b-4.

\(^4\) 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 providers on their behalf.\(^5\) Thus, the Exchange proposes to amend Rule 760 to clarify that these Directed ROTs must now retain records relating to payment for order flow arrangements.\(^6\)

The text of Rule 760, as proposed to be amended, is set forth below with new language underlined and deletions bracketed.

Rule 760.
Maintenance, Retention and Furnishing of Books, Records and Other Information

Every member and member organization shall make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Securities Exchange Act of 1934 and the rules and regulations thereunder. No member or member organization shall refuse to make available to the Exchange such books, records or other information as may be called for under the rules or as may be requested in connection with an investigation by the Exchange.

Supplementary Material: ...

.01 Without limiting the general provisions of Rule 760, such Rule requires Specialists, \(\) Specialist Units or Registered Options Traders who request that payments be made \(\) funds, or who make payments \(\) to order flow providers as part

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\(^5\) 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 will be disbursed by the Exchange according to the instructions of the specialist units and Directed ROTs.

\(^6\) Specialists/specialist units are already specifically required to maintain these books and records.
of the Exchange's payment for order flow program, to make, keep current and preserve all books and records relating to payment for order flow arrangements, including but not limited to all records pertaining to the identity of the order flow providers, [and] the [origin, use, transfer, distribution and] rates, and the basis for the amounts they have directed the Exchange to pay to order flow providers [of all payments] (whether on a per contract or flat fee basis). [Such records should be maintained in such a fashion as to permit the Exchange to track payments to order flow providers on an option by option basis.] Such books and records shall be made available as may be requested by the Exchange.

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, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to update Rule 760 to reflect recent changes to the Exchange’s payment for order flow program, specifically including that Directed ROTs must now retain records relating to payment for order flow arrangements.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^7\) in general, and furthers the objectives of Section 6(b)(1) of the Act\(^8\) in particular, in that it assists the Exchange in determining and enforcing compliance with its rules (i.e., the

\(^7\) 15 U.S.C. 78f(b).

specific terms of the Exchange’s payment for order flow program). By enabling the
Exchange to verify that the payment for order flow program is being administered in
accordance with the terms thereof as approved by the Exchange and set forth in its filing
with the Commission, this proposal also promotes just and equitable principles of trade
consistent with Section 6(b)(5) of the Act.

B. **Self-Regulatory Organization’s Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any
burden on competition 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**

No written comments were either solicited or received.

**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 shall: (a) by order approve such proposed
rule change, or (b) institute proceedings to determine whether the proposed rule change
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 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. Please include File Number SR-Phlx-2005-67 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2005-67. 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 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 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-2005-67 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.⁹

Margaret H. McFarland
Deputy Secretary

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