

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53070; File No. SR-Phlx-2005-63

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Prohibition of Trade Shredding

January 6, 2006.

#### I. Introduction

On October 25, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the proposed rule change relating to the prohibition of trade shredding. The proposed rule change was published for comment in the *Federal Register* on December 5, 2005.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposed to amend Rule 707, Conduct Inconsistent with Just and Equitable Principles of Trade, to prohibit members, member organizations and persons associated with or employed by a member or member organization from unbundling orders for execution for the primary purpose of maximizing a monetary or like payment to the member, member organization, or person associated with or employed by a member or member organization.

#### III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>4</sup>

particularly Section 6(b)(5) of the Act which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.<sup>5</sup> The Commission believes that the proposed rule change should help eliminate the distortive practice of trade shredding, and, therefore, promote just and equitable principles of trade.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (File No. SR-Phlx-2005-63), be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53088; File No. SR-Phlx-2005-87]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change, and Amendment No. 1 Thereto Relating to the Exchange's Covered Sale Fee and Exchange Rule 607

January 6, 2006.

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 December 23, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. On January 4, 2006, the Exchange filed Amendment No. 1 to the proposed rule

impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and is approving the amended proposal on an accelerated basis.

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

The Phlx proposes to change the title from the "SEC Fee" to "Covered Sale Fee" as it appears on the Exchange's Summary of Equity Charges and the Nasdaq-100 Index Tracking Stock<sup>SM</sup> Fee Schedule ("Fee Schedule").<sup>4</sup> The Exchange also proposes to amend Exchange Rule 607 to clarify the description of the Covered Sale Fee, including renaming the title of Phlx Rule 607 to "Covered Sale Fee" and providing a more complete description of a new arrangement for passing fees among Intermarket Trading System ("ITS") participants. Below is the text of the proposed rule change, as amended. Proposed new language is in italics; proposed deletions are in brackets. Rule 607.

[Transaction] *Covered Sale Fee*

*Under Section 31 of the Securities Exchange Act of 1934, the Exchange must pay certain fees to the Securities and Exchange Commission ("Commission"). To help fund the Exchange's obligations to the Commission under Section 31, a Covered Sale Fee is assessed by the Exchange to members and member organizations. To the extent there may be any excess monies collected under this Rule, the Exchange may retain those monies to help fund its general operating expenses. [Every member and member organization shall pay to the Exchange in such manner and at such time as the Exchange shall direct, the fees specified in Section 31 of the Securities Exchange Act of 1934, and rules thereunder, for all sales upon the Exchange of securities specified in*

<sup>3</sup> Amendment No. 1 made technical changes to the proposed rule text.

<sup>4</sup> The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares<sup>SM</sup>, Nasdaq-100 Trust<sup>SM</sup>, Nasdaq-100 Index Tracking Stock<sup>SM</sup>, and QQQ<sup>SM</sup> are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Phlx pursuant to a license agreement with Nasdaq. The Nasdaq-100 Index® ("Index") is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust<sup>SM</sup>, or the beneficial owners of Nasdaq-100 Shares<sup>SM</sup>. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 52834 (November 25, 2005), 70 FR 72492.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's