

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44103; File No. SR-PHLX-01-08]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Concerning Maintenance, Retention, and Furnishing of Records and Other Information With Respect to Payment for Order Flow Arrangements

March 26, 2001.

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 January 19, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items the Phlx has prepared. 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 amend Phlx Rule 760 to require specifically that members and member organizations make, keep current, and preserve records relating to payment for order flow arrangements and make those records available to the Phlx upon request for inspection and review. A copy of the proposed Supplementary Material .01 to Rule 760 is available at the principal office of the Phlx and at the Commission.

#### 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 organization 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

The purpose of the proposed rule change is to specify that members and member organizations make, keep current, preserve, maintain and make available records relating to payment for order flow arrangements. The proposed rule change supplements the general recordkeeping provisions of Phlx Rule 760, which requires every member to make, maintain, preserve and make available books and records as prescribed by the Act, the rules and regulations under the Act, and the rules of the Phlx.

The Phlx began imposing payment for order flow fees on certain options transactions of specialists and Registered Options Traders ("ROTs") as of August 1, 2000. A fee, currently \$1.00 per contract, is imposed on all transactions executed by specialists and ROTs in the Top 120 Options traded on the Phlx, with various exceptions.<sup>3</sup> The specialists make all determinations concerning the amount that is paid for orders and which order flow providers receive the payments.

The proposed amendment to Rule 760 requires members and member organizations that participate in a payment for order flow arrangement to keep, among other things, records relating to: (a) The amount of fees received; (b) the transfer of those fees; (c) the final transfer of those funds to the order flow providers; (d) the names of the order flow providers; (e) the amount of payments and whether the amount is on a per-contract or flat-fee basis; and (f) any other records relating to payment for order flow arrangements.<sup>4</sup>

The Phlx believes that the proposed rule change will give Phlx members and member organizations more specific guidance concerning their obligations to maintain records relating to payment for order flow arrangements. The Phlx

<sup>3</sup> Transactions in Top 120 Options that are excepted from the \$1.00 fee are transactions between: (1) A specialist and an ROT; (2) an ROT and an ROT; (3) a specialist and a firm; (4) an ROT and a firm; (5) a specialist and a broker-dealer; and (6) an ROT and a broker-dealer. See Securities Exchange Act Release Nos. 43177 (Aug. 18, 2000), 65 FR 51889 (Aug. 25, 2000) (SR-PHLX-00-77); 43480 (Oct. 25, 2000), 65 FR 66275 (Nov. 3, 2000) (SR-PHLX-00-86, Phlx-00-87); and 43481 (Oct. 25, 2000), 65 FR 66277 (Nov. 3, 2000) (SR-PHLX-00-88, SR-PHLX-00-89).

<sup>4</sup> Some of the records that must be kept and maintained for purposes of the payment for order flow program may also fall under the recordkeeping provisions of Section 17 of the Act and Rules 17a-3 and 17a-4 thereunder. State and federal tax law and other applicable laws may also require the maintenance of those records.

believes that this, in turn, should help the Phlx to review and verify, if necessary, that the funds collected for order flow purposes are not put to improper use.<sup>5</sup> It is the Phlx's belief that the proposed amendment to Rule 760 will emphasize the importance of recordkeeping duties with respect to payment for order flow, encourage compliance by the membership, and ensure the proper administration of the payment for order flow program as a whole.

The proposed amendment to Phlx Rule 760 does not enable the Phlx to become involved directly or indirectly in the decisions of members or member organizations regarding which order flow providers should be paid, which options they should be paid for, or how much should be paid to order flow providers individually or collectively. Those decisions are committed exclusively to the specialists.

The Phlx believes that the proposed rule change will assist its efforts to enforce compliance with the rules governing its payment for order flow program consistent with Section 6(b)<sup>6</sup> of the Act, particularly subsection 6(b)(1),<sup>7</sup> and will promote just and equitable principles of trade consistent with subsection 6(b)(5).<sup>8</sup>

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

The Phlx 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

The Phlx neither solicited nor received any comments.

#### 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 might 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, or

<sup>5</sup> In order to facilitate review and verification, the records should be maintained in such a fashion as to permit the Phlx to track payments to various order flow providers on an option-by-option basis, and to view all payments made to each order flow provider.

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

<sup>7</sup> 15 U.S.C. 78f(b)(1).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

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

(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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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 such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-01-08 and should be submitted April 23, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jonathan G. Katz,**  
Secretary.

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#### SOCIAL SECURITY ADMINISTRATION

##### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with P.L. 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the

information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer and at the following addresses: (OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503; (SSA), Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1-A-21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410-965-4145, or by writing to him at the address listed above.

1. *Function Report—Third Party*, SSA-3380-0960-NEW. The Social Security Act provides that claimants must furnish medical and other evidence to prove they are disabled. The Social Security Act also gives the Commissioner authority to make rules and regulations on the nature and extent of evidence required as well as the methods of obtaining evidence. The information collected from third parties on the form SSA-3380 is needed for the determination of disability under Title II (Old-Age, Survivors and Disability Insurance (OASDI)) and/or Title XVI (Supplemental Security Income (SSI)). The form records information about the disability applicant's illnesses, injuries, conditions, impairment-related limitations and ability to function. The respondents are individuals who know about the disability applicant's impairment, limitations and ability to function.

*Number of Respondents:* 1,500,000.  
*Frequency of Response:* 1.  
*Average Burden Per Response:* 30 minutes.

*Estimated Annual Burden:* 750,000 hours.

2. *Disability Hearing Officer's Decision—0960-0441*. The Social Security Act requires that SSA provide an evidentiary hearing at the reconsideration level of appeal for claimants who have received an initial or revised determination that a disability did not exist or has ceased. Based on the hearing, the disability hearing officer (DHO) completes an SSA-1207 and applicable supplementary forms (which apply to the type of claim involved). The DHO uses the information in documenting and preparing the disability decision.

The form will aid the DHO in addressing the crucial elements of the case in a sequential and logical fashion. The respondents are DHOs in the State Disability Determination Services (DDS).

*Number of Respondents:* 100,000.  
*Frequency of Response:* 1.  
*Average Burden Per Response:* 45 minutes.

*Estimated Annual Burden:* 75,000 hours.

3. *Medical History and Disability Report, Disabled Child—0960-0577*. The Social Security Act requires claimants to furnish medical and other evidence to prove they are disabled. The form SSA-3820 is used to obtain various types of information about a child's condition, his/her treating sources and/or other medical sources of evidence. The information collected on the SSA-3820 is needed for the determination of disability by the State DDSs. The respondents are applicants for Title XVI (SSI) child disability benefits.

*Number of Respondents:* 523,000.  
*Frequency of Response:* 1.  
*Average Burden Per Response:* 40 minutes.

*Estimated Annual Burden:* 348,667 hours.

4. *Disability Report-Adult—0960-0579*. The Social Security Act requires claimants to furnish medical and other evidence to prove they are disabled. Applicants for disability benefits will complete form SSA-3368. The information will be used, in conjunction with other evidence, by State DDSs to develop medical evidence, to assess the alleged disability, and to make a disability determination. The respondents are adult applicants for Title II (OASDI) and Title XVI (SSI) disability benefits.

*Number of Respondents:* 2,116,667.  
*Frequency of Response:* 1.  
*Average Burden Per Response:* 60 minutes.

*Estimated Annual Burden:* 2,116,667 hours.

5. *Wage Reports and Pension Information—0960-0547*. The information required by 20 CFR 422.122(b) is used by SSA to identify the requester of pension plan information and to confirm that the individual is entitled to the data we provide. The respondents are requesters of pension plan information.

*Number of Respondents:* 600.  
*Frequency of Response:* 1.  
*Average Burden Per Response:* 30 minutes.

*Estimated Annual Burden:* 300 hours.

6. *Beneficiary Recontact Report—0960-0502*. SSA uses the information

<sup>9</sup> 17 CFR 200.30-3(a)(12).