SECURITIES AND EXCHANGE COMMISSION
[Release No. 34–39754; File No. SR–Phlx–97–53]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amending Its Floor Procedure Advice A–1 Regarding Displaying Best Bids and Offers


I. Introduction


The proposed rule change and Amendments 1 and 2 thereto were published for comment in the Federal Register on January 29, 1998.4 No comments were received on the proposal. This order approves the proposal as amended.

II. Description of the Proposal

The Phlx is proposing to amend its Advice A–1, regarding displaying best bids and offers to require Floor Brokers and Registered Options Traders (“ROTs”) to immediately remove stale bids/offers. Currently, Advice A–1 requires that Specialists use due diligence to ensure that the best available bid and offer is displayed for those option series in which s/he is assigned. Under Advice A–1, bids and offers for the Specialist’s own account, bids and offers on the book, and bids and offers established in the crowd are deemed to be available for display purposes. The Phlx proposes: (1) To designate the foregoing provisions from the current advice as a paragraph (a) of Advice A–1 and (2) to create new paragraph (b), to govern situations where a member of the trading crowd is no longer bidding and offering. In the latter situations, under the proposal, the Floor Broker or ROT would be required to use due diligence to inform the Specialist when s/he is no longer bidding/offering at that price. Under the proposal, the Floor Broker or ROT must immediately inform the Specialist when s/he is “out” of that bid/offer, including due to an execution or departure from the crowd.

New paragraph (b) is being proposed to address situations where members have been “out” of a bid/offer, yet failed to inform the Specialist. Often, that member is no longer present in the trading crowd. In that instance, if a trade occurs because someone accepted the stale bid/offer, either the member who initiated the bid/offer, the Specialist or the other members of the trading crowd will be required to honor the trade. Regardless of who honors the trade, the intent of this proposal is to deter these occurrences by imposing fines for such conduct. The proposed language refers to being “out” of a market for reasons including (but not limited to) an execution or a departure from the crowd. Other reasons may also apply, but the Exchange determined that an exhaustive list is neither possible, nor necessary, and, therefore, the violation involves the general failure to inform the Specialist, regardless of the particular reason for being “out.” A member that fails to meet the obligations imposed upon it by new paragraph (b) will be subject to a fine.5

Under the proposal, fines would be imposed by Option Floor Officials who would determine whether a member should be fined based upon whether a stale quote was caused by a Specialist not using due diligence to ensure that the best available bid and offer is displayed pursuant to paragraph (a) or whether it was caused by a Floor Broker or ROT not using due diligence to inform the Specialist that it was no longer bidding/offer ing at that price, pursuant to paragraph (b) of the Advice. The Exchange believes that violations of proposed new paragraph (b) of the Advice involving a failure to notify the Specialist when a Floor Broker or ROT is “out” of a market are within the purview of Phlx Rule 970, concerning minor rule violations, and are otherwise designed to be easily verifiable and objective. The Exchange notes that the proposed fines are comparable to those in other advices, such as Advices A–2 (Types of Orders to be Accepted onto the Specialist’s Book), B–4 (PHLX ROTs Entering Orders from On-Floor and Off-Floor for Execution on the Exchange) and B–5 (Agency-Principal Restrictions).

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).6 Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5)7 requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The proposal is also consistent with the Section 6(b)(6)8 requirement that the rules of an exchange provide that its members and persons associated with those members be appropriately disciplined for violations of an exchange’s rules and the Act.9

The proposal is consistent with Exchange Act Section 6(b)(5) because it helps to discourage Floor Brokers and ROTs from walking away from quotes that they have posted. The proposal also is consistent with Exchange Act Section 6(b)(6) in that it provides for an appropriate penalty to be assessed against those who violate the advice.

Maintaining accurate option quotes is integral to the Specialist’s role in the marketplace. Although a member posting a bid/offer is generally not held to that market after leaving the trading crowd, the purpose of the proposed rule change is to discourage stale markets by giving the Exchange the ability to impose fines for failure to remove such a bid/offer. Failure to remove a bid/offer may cause the member making the bid/offer or other crowd participants to have to honor an incorrectly disseminated price.


The fine schedule applicable to proposed new paragraph (b) of the Advice will be as follows: 1st Occurrence: $250.00. 2nd Occurrence: $500.00. 3rd and Thereafter: Sanction is discretionary with Business Conduct Committee.

3 See Letter from Michele R. Welsaum, Vice President and Assistant General Counsel, Phlx, to David Sieradzki, Attorney, Division of Market Regulation (“Division”), Commission dated December 18, 1997 and letter from J. Keith Kessel, Phlx, to David Sieradzki, Attorney, Division, Commission dated January 16, 1998. Amendments 1 and 2 made several changes to clarify the purpose section of the filing.
5 The fine schedule applicable to specialists, which will remain unchanged, is as follows: 1st Occurrence: $50.00. 2nd Occurrence: $100.00. 3rd Occurrence: $250.00. 4th and Thereafter: Sanction is discretionary with Business Conduct Committee.
9 In approving this rule, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
quote that may have attracted order
flow, including Phlx Automatic
Execution System orders. To avoid this
result, the Commission believes that it
is appropriate for the Phlx to require
Floor Brokers and ROTs to use due
diligence to inform the Specialist when
they are “out” of a bid/offer.

The Commission notes that the
proposed rule is similar to a Chicago
Board Options Exchange rule, requiring
Floor Brokers, Designated Primary
Market-Makers and Order Book Officials
cauing a bid/offer to be disseminated to
be responsible for having the bid/offer
removed once the order is filled or
canceled.10

The Exchange has represented that
this rule will be enforced under
Exchange Rule 970, which is the
Exchange’s minor rule violation
enforcement and reporting plan
(“MRP”).11 The Commission believes
that enforcing Floor Procedure Advice
A–1, paragraph (b) under the Exchange’s
MRP is consistent with Section 6(b)(6)
of the Act. The purpose of the
Exchange’s MRP is to provide a
response to a violation of the Exchange’s
rules when a meaningful sanction is
needed but when initiation of a
disciplinary proceeding pursuant to
Exchange Rule 960.212 is not suitable
because such a proceeding would be
more costly and time-consuming than
would be warranted given the nature of
the violation. Violations of Floor
Procedure Advice A–1, paragraph (b)
can be appropriately handled through
expedited proceedings because they are
objective in nature and easily verifiable.
Noncompliance with the provisions
may be determined objectively and
adjudicated quickly without the
complicated factual and interpretive
inquiries associated with more
sophisticated Exchange disciplinary
proceedings.

Finally, the Commission finds that the
imposition of the recommended fines
for violations of Floor Procedure Advice
A–1, paragraph (b) should result in
appropriate discipline of members in a
manner that is proportionate to the
nature of such violations.

It is therefore ordered, pursuant to
Section 19(b)(2) of the Act,13 that the
proposed rule change (SR–Phlx–97–53)
is approved.

For the Commission, by the Division of
Market Regulation, pursuant to delegated
authority.14

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<th>Number of Respondents</th>
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2. Beneficiary Recontact Report—
0960–0502. The information on Form
SSA–1588–OCR–SM is used by SSA to
recontact mothers, fathers or children
ages 15–17, who receive their benefits
directly, to determine if they are still
entitled to benefits. The respondents are
beneficiaries who are in the “high risk”
area and, therefore, are most prone to
overpayments.

Number of Respondents: 163,000.
Frequency of Response: 1.
Average Burden Per Response: 5
minutes.
Estimated Annual Burden: 13,583
hours.

3. Information About Joint Checking/
Savings Account—0960–0461. The
information collected on Form SSA–
2574 is used by SSA to determine
whether a joint bank account should be
counted as a resource of a Supplemental
Security Income (SSI) claimant or
applicant in determining eligibility for
SSI. The respondents are applicants for
and recipients of SSI payments and
individuals who are joint owners of
financial accounts with SSI applicants/
recipients.

Number of Respondents: 200,000.
Frequency of Response: 1.
Average Burden Per Response: 7
minutes.
Estimated Annual Burden: 23,333
hours.

4. Agency/Employer GPO
Questionnaire—0960–0470. The
information on Form SSA–4163 is used
by SSA to determine the need for and
the amount of any offset of benefits for
certain individuals receiving
Government pensions and receiving or
and abbreviated reporting. Rule 19d–1(c)(1)
under the Act requires that SROs promptly file notice with
the Commission of any final disciplinary actions. However,
minor rule violations not exceeding
$2,500 where the sanctioned person has not sought
an adjudication, including a hearing, or otherwise
exhausted his administrative remedies at the SRO
with respect to the matter are deemed not final for
purposes of Rule 19d–1(c)(1), thereby permitting
applying for Social Security benefits.

The respondents are State governments
or their political subdivisions.

Number of Respondents: 1,000.
Frequency of Response: 1.
Average Burden Per Response: 3
minutes.
Estimated Annual Burden: 50 hours.

5. Authorization for the Social
Security Administration to Obtain
Records from a Financial Institution and
Request for Records—0960–0293. The
information on Form SSA–4641 is used
by SSA to determine whether an
applicant meets the resource eligibility
requirements for SSI and Aid to
Families with Dependent Children
(AFDC). This information is only used
as part of the quality review of the
AFDC program. The respondents are
financial institutions.

periodic, as opposed to immediate, reporting. See
Phlx Rule 970 and 17 CFR 240.19d–1(c).

12 Phlx Rule 960.2 governs the initiation of
disciplinary proceedings by the Exchange for
violations within the disciplinary jurisdiction of the
Exchange.
