

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has asked the Commission to waive the 30-day operative period. The Commission believes it is consistent with the protection of investors and the public interest and therefore finds good cause to allow the proposal to become operative today because the proposal conforms PCX's continuing education requirements for registered persons to those at other exchanges, and there is no benefit to investors and other market participants in requiring a 30-day operative delay. For these reasons, the Commission hereby agrees to waive the 30-day operative period, allowing the proposal to be both effective and operative as of the date the Exchange filed the proposal with the Commission.¹⁴

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof 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 PCX. All submissions should refer to file number SR-PCX-00-22 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-43161; File No. SR-Phlx-00-39)

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Disqualification of Governors

August 16, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 14, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 15, 2000, the Phlx filed Amendment No. 1 to the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1)

² 17 CFR 240.19b-4.

³ Letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 15, 2000 and received by fax ("Amendment No. 1"). Amendment No. 1 made a technical correction to the language of the proposed rule.

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

The Exchange proposes to amend Phlx By-Law Article IV, Section 4-8, *Disqualification of Governors*, to provide that members of the Board of Governors or of any standing or special committee or subcommittee ("Covered Persons") shall not participate, directly or indirectly, in the discussion or determination of any matter affecting their interests, the interests of any member of their immediate family, or any matter in which their impartiality might reasonably be questioned. The proposed rule change provides an exception to allow participation in situations where the covered person's sole interest lies in their membership in the Exchange or in a sub class membership, unless their impartiality might reasonably be questioned. Proposed new language is *italized*, proposed deletions are in brackets.

* * * * *

ARTICLE IV

Board of Governors

Disqualification of Governors

SEC. 4-8. (a) No Governor shall be disqualified from participating in any meeting, action or proceeding of the Board of Governors by reason of being or having been a member of a Standing or Special Committee which has made prior inquiry, examination or investigation of the subject under consideration. Nor shall any member of any such Committee be disqualified by reason of such membership from acting as a Governor upon an appeal from a decision of any such Committee. [But no person shall] *Pursuant to the Exchange's Code of Conduct for Board Members and Committee Members, members of the Board of Governors or of any Standing or Special Committee or subcommittee shall not participate, directly or indirectly in the [determination of any matter in which he is personally interested.] discussion or determination of any matter affecting their interests, or the interests of any member of their immediate family, or any matter in which their impartiality might reasonably be questioned.*

(b) *For purposes of this section, the term "immediate family" shall include a spouse, a parent, a mother-in-law, a father-in-law, a brother, a sister, a child, any other person living with the individual or any person for whom the individual provides at least 50 percent of that person's financial support per year.*

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ The Commission considers the proposal to have been filed as of August 14, 2000, the date the Exchange filed Amendment No. 1.

(c) *The last sentence of sub-section (a) of this section shall not apply when the interest of the relevant person is derived solely from being part of the general membership or of a class of members, unless their impartiality might reasonably be questioned.*

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 Exchange 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

Phlx By-Law, Article IV, Section 4–8 describes the discussions and decisions in which members of the Phlx Board of Governors (“Board Members”) must refrain from participation. The provision further specifies discussions and decisions that do not require Board Members to refrain from participation. The Exchange proposes to amend Phlx By-Law, Article IV, Section 4–8 to conform to the new Phlx 1999 Code of Conduct for Board Member and Committee Members (“1999 Code of Conduct”). The Phlx Code of Conduct, which was adopted in 1997 (“1997 Code of Conduct”), describes, among other things the discussions and decisions in which Covered Persons must refrain from participation.⁴ The Phlx Board of Governors revised the 1997 Code of Conduct in July 1999, modifying the language regarding the disqualification of Covered Persons.

The Phlx's proposed rule change will amend its By-Law, Article IV, Section 4–8 to prohibit Covered Persons from participating in matters in which they or their immediate family have an interest.⁵ The Exchange proposes to

allow participation in matters where the Covered Person's interest arises solely from membership in the Exchange or a sub-class of membership, unless their impartiality might reasonably be questioned.⁶ The Exchange believes that the proposed rule change will provide Phlx members fair representation in the administration of the Exchange's affairs.

The Exchange also represents that the proposed rule change will strengthen its present framework of conflict of interest provisions.⁷ The 1999 Code of Conduct, for example, requires Covered persons to make prompt disclosure of any interest that could reasonably appear to violate the 1999 Code of Conduct. In addition, Phlx By-Law Article X, Section 10–9(b) and the 1999 Code of Conduct both authorize the Exchange's Audit Committee to conduct reviews of any alleged improper conduct and recommend appropriate action to the Board.

2. Statutory Basis

The Exchange represents that the proposed rule change would prohibit the discussion and determination of Exchange matters by Covered Persons or their immediate family who have an interest in the matter, unless that interest is impartial and arises solely from membership in the Exchange or a sub-class of membership. For this reason, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act⁸ in general, and furthers the objectives of Section 6(b)(3)⁹ in particular, in that it ensures Phlx members fair representation in the administration of the Exchange's affairs.

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 that is not

or any person for whom the individual provides at least 50 percent of that person's financial support per year.

⁶ The phrase “a sub-class of membership” refers to the various categories of Phlx membership. Examples of sub-classes include: equity members and options members; on-floor and off-floor members; and specialists and floor brokers on each floor. The Exchange represents that many decisions in Board and committee meetings, such as fees on equity floor transactions or requirements for arbitration in customer contracts, apply to only one or more of these sub-classes and not to others. The Exchange represents that it does not intend to disqualify persons from making decisions solely because they are part of a sub-class, such as market makers or off-floor members, which will be affected by the outcome of the decision.

⁷ Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Susie Cho, Attorney, Division of Market Regulation (“Division”, Commission (May 19, 2000).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(3).

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

The Exchange did not solicit or receive written comments on the proposed rule change.

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 the Exchange consents, the Commission will:

(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, as amended, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-00-39 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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⁴ Following the adoption of the 1997 Code of Conduct, the Exchange conformed the language in Phlx By-Law, Article IV, Section 4–8 to the language in the 1997 Code of Conduct. See Securities Exchange Act Release No. 39722 (March 4, 1998), 63 FR 12569 (March 13, 1998).

⁵ The 1999 Code of Conduct and the proposed amendment to Phlx By-Law Article IV, Section 4–8 define “immediate family” as a spouse, a parent, a mother-in-law, a father-in-law, a brother, a sister, a child, any other person living with the individual

¹⁰ 17 CFR 200.30–3(a)(12)