

available for inspection and copying at the principal office of the NASD.

All submissions should refer to file No. SR-NASD-99-66 and should be submitted by February 3, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42317; File No. SR-Phlx-99-48]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending the Exchange's Certificate of Incorporation

January 5, 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 November 18, 1999, 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 Exchange. The Phlx filed an amendment to the proposal on November 23, 1999.³ The Commission is publishing this notice and order 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

Proposed Article Twentieth would give the Board the power (1) to assess

fees, dues, and other charges upon members, lessors and lessees of memberships, and holders of permits as the Board may from time to time adopt by resolution or set forth in the Rules of the Board, and (2) to assess penalties for failure to pay any fees, dues, or other charges owed to the Exchange, including cancellation of a membership or permit and forfeiture of all rights as a member, lessor, lessee, or holder of a permit. The Board may delegate powers of the Board with respect to the assessment of fees, dues, other charges, and penalties to any committee or the Chairman of the Board. The text of the new Article Twentieth is available at the office of Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement Regarding the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 III 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

The purpose of the proposed rule change is to amend the Exchange's Certificate of Incorporation to provide Phlx's Board the specific authority to impose fees, dues, and charges upon members, lessors, and lessees of memberships, and holders of permits. Article Twentieth will permit the Board to more equitably allocate dues, fees, and charges among the Exchange's various constituents, thereby ensuring appropriate distribution of costs relating to maintaining and enhancing the competitive operations of the Exchange.

For these reasons, the Exchange believes that the proposed rule change is consistent with section 6(b)⁴ of the Act, in general, and with section 6(b)(4),⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

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

The Exchange believes that the proposed rule change imposes no burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.⁶

III. 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, NW, Washington, DC 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 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549-0609. 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-99-48 and should be submitted by [insert 21 days from date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds, for the reasons set forth below, that the Phlx's proposal is consistent with the requirements of the act and the rules and regulations

⁶ Written comments were received in response to rule filing SR-Phlx-99-43 in which Phlx proposed to charge a \$1,500 monthly capital funding fee on each exchange seat owner. On November 17, 1999, the Phlx withdrew SR-Phlx-99-43. On November 26, 1999, the Phlx filed SR-Phlx-99-49, proposing a three-month pilot of the \$1,500 monthly capital funding fee, and SR-Phlx-99-51, requesting permanent approval of that proposal. Phlx has also proposed a monthly credit of up to \$1,000 to be applied against certain fees, dues, charges, and other amounts owed to the Exchange by an owner who is also a member of the Exchange (SR-Phlx-99-54). In addition, the Exchange has indicated that it intends to submit rule filings relating to trading permits.

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Cynthia Hoekstra, Counsel, Phlx to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated November 22, 1999 ("Amendment No. 1"). The Phlx originally filed two new Articles to its Certificate of Incorporation, Article Nineteenth and Article Twentieth. Amendment No. 1 removes from consideration the adoption of Article Nineteenth. On November 22, 1999, the Phlx filed SR-Phlx-99-50 proposing the adoption of Article Nineteenth which provides, in part, that in addition to all other powers granted to the Phlx Board of Governors ("Board") by law, the Certificate of Incorporation or otherwise, the Board shall have the power to determine whether, and under what terms and conditions, memberships may be leased, and to adopt by resolution or to set forth in the Rules of the Board such rules with respect to leases, lessors and lessees as the Board determines to be advisable.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act.⁷ Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The proposal is consistent with Section 6(b)(4) because it will permit the Phlx Board to more equitably allocate dues, fees, and other charges among the Exchange's various constituents, thereby helping to ensure appropriate distribution of costs necessary to maintain and enhance the competitive operations of the Exchange.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Phlx has represented that to compete in the current capital market environment the Board must have specific authority to assess fees, dues, and other charges upon members, lessors and lessees of memberships, and holders of permits if and when such permits are proposed by the Phlx and approved by the Commission.⁸ Article Twentieth provides that authority. In the context of heightened competition in the options markets the Commission believes it is important for the Phlx to have the necessary authority to respond quickly to competitive pressures. Therefore, the Commission finds good cause for approving the proposed rule change on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-Phlx-99-48) is hereby approved on an accelerated basis. In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation.¹⁰

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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⁷ 15 U.S.C. 78f(b)(4).

⁸ This approval order should not be interpreted as suggesting that the Commission is predisposed to approving any pending Phlx filing to assess fees under the authority of Article Twentieth.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 15 U.S.C. 78c(f).

¹¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42318; File No. SR-Phlx-99-49]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Implementing a Pilot Program to Assess a Monthly Capital Funding Fee

January 5, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 196-4 thereunder,² notice is hereby given that on November 26, 1999, 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 Exchange. On January 5, 2000, Phlx submitted an amendment to the proposed rule filing ("Amendment No. 1").³ The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal until April 5, 2000.

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

The Phlx proposes to amend its schedule of dues, fees, and charges to charge each of the 505 Exchange seat owners⁴ a monthly capital funding fee of \$1,500 per seat owned.⁵ The proposed capital funding fee will be implemented under a three-month pilot program to expire on April 5, 2000.⁶

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Phlx to Marla Chidsey, Attorney, Division of Market Regulation, Commission, from Bob Ackerman, Senior Vice President, Chief Regulatory Officer, Phlx, dated January 5, 2000. Amendment No. 1 provides Phlx's a fee schedule and is attached as Appendix A.

⁴ For the purpose of filing, the term owner is defined as any person or entity who or which is a holder of equitable title to a membership in the Exchange.

⁵ Although the term "seat owner" is not defined in Phlx's Bylaws or the Certificate of Incorporation, the term seat owner is the equivalent of a "membership owner" as referenced in Phlx's Bylaws and Certificate of Incorporation. However, a seat owner is not per se a member of the Phlx Exchange. Telephone conversation between Marla Chidsey, Attorney, Division of Market Regulation, Commission, and Bob Ackerman, Senior Vice President, Chief Regulatory Officer, Phlx (January 5, 2000).

⁶ On November 26, 1999, the Exchange filed for permanent approval of the \$1,500 capital funding fee. See SR-Phlx-99-51. On October 1, 1999, the Exchange filed a proposal to charge the monthly

II. Self-Regulatory Organization's Statement Regarding the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 III 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

The purpose of the proposed rule change is to amend Phlx's schedule of dues, fees, and charges to charge a monthly capital funding of \$1,500 per Exchange seat to seat owners.⁷

The \$1,500 capital funding fee will be imposed on each of the 505 Exchange seat owners on the last business day of the calendar month. Thus, the owner is responsible for paying the entire subsequent month's fee on the last business day of the prior month.⁸ The Exchange intends to segregate the funds generated from the \$1,500 fee from Phlx's general funds.

The monthly \$1,500 fee is part of the Exchange's long-term financing plan. This monthly fee will provide funding for technological improvements and other capital needs.⁹ Specifically, it is intended to fund capital purchases, including hardware for capacity upgrades, development efforts for decimalization, and trading floor expansion. The revenue raised from the fee will be utilized over a three-year period. At that time the Exchange intends to reevaluate its financing plan to determine whether this fee should continue. The revenue generated from

\$1,500 capital funding fee. See Securities Exchange Act Release No. 42058 (October 22, 1999), 64 FR 58878 (December 15, 1999). However, on November 17, 1999, the Exchange withdrew SR-Phlx-99-43.

⁷ Under Phlx's by-laws, seat owners who lease out their seats are not deemed members of the Exchange. See Phlx Rules of Board of Governors, Rules 3, 5, 17, and 18.

⁸ For example, owners of record on September 30 will be billed \$1,500 for the month of October.

⁹ This fee is distinguished from the Exchange's technology fee in that the technology fee was intended to cover system software modifications, Year 2000 modifications, specific system development (maintenance) costs, SIAC and OPRA communication charges, and ongoing system maintenance charges. The technology fee became effective upon filing in March, 1997. See Securities Exchange Act Release No. 38394 (March 12, 1997), 62 FR 13204 (March 19, 1997) (SR-Phlx-97-09).