

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42773; File No. SR-Phlx-00-30]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending the Exchange's Certificate of Incorporation

May 11, 2000.

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 April 10, 2000, 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, III, below, which Items have been prepared by the Exchange. On May 3, 2000, the Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 Article Twentieth of its Certificate of Incorporation to add the words "owner" and "member organization" to the text of Article Twentieth and define the term "owner."<sup>4</sup> Article Twentieth authorizes the Phlx Board of Governors ("Board") to (1) assess fees, dues, and other charges upon members, lessors and lessees of memberships, and holders of permits as the Board may adopt by resolution or set forth in the Rules of the Board, and (2) 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. Under Article Twentieth the Board may delegate its powers with

respect to the assessment of fees, dues, other charges, and penalties to any committee of the Board or the Chairman of the Board. Article Twentieth also provides that fees, dues, other charges, and penalties authorized under the Article are in addition to any fees, dues, other charges or penalties imposed under the By-Laws of the Phlx.

The proposed amendment to Article Twentieth adds "owners" and "member organizations" to the categories that will be subject to the Board's authority to assess fees, dues, and other charges. In addition, the amendment defines the term "owner" for purposes of the Phlx's Certificate of Incorporation and rules. As proposed, "owner" is defined as any person or entity who or which is a holder of equitable title to a membership in the Phlx.

The Exchange represents that "owners" and "member organizations" are implicitly covered under the current text of Article Twentieth; however, the Exchange believes that a direct reference to owners and member organizations will nevertheless help clarify matters relating to the interpretation of those terms. For example, a leasing agreement may expire, resulting in a situation where an owner who formerly leased its membership is not currently leasing that membership. The Exchange believes that the owner remains classified as a "lessor" even though the membership currently is not leased,<sup>5</sup> and, therefore, would be included in the current classes specified in Article Twentieth. However, the Exchange believes it is in the best interests of the members, owners and the Exchange to clarify the original intent of Article Twentieth by expanding the classes to include "owners."

The Exchange also believes that it is desirable to clarify that "member organizations" are intended to be within the scope of entities subject to fees, dues, and other charges imposed pursuant to Article Twentieth. For example, although member organizations are "owners" for purposes of Article Twentieth, there may be situations where the Exchange may wish to charge fees, dues, or other charges under Article Twentieth that affect certain classes of owners, such as member organizations, but not others. In such circumstances, an explicit

reference to member organizations in Article Twentieth would be helpful.

#### 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 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

The purpose of the proposed rule change is to amend the Exchange's Certificate of Incorporation to specifically permit the Board to impose fees, dues, and other charges upon "member organizations" and "owners." The proposed rule change clarifies the Board's authority to allocate dues, fees, and other charges among the Exchange's various constituents, thereby ensuring appropriate distribution of costs relating to maintaining and enhancing the competitive operations of the Exchange.

In addition, the amendment defines the term "owner" for purposes of the Exchange's Certificate of Incorporation and rules as any person or entity who or which is a holder of equitable title to a membership in the Exchange. The term "owner" is intended to encompass lessors and member organizations who are parties to A-B-C Agreements.<sup>6</sup> Lessors and member organizations that have provided all or part of the funds for the purchase of a membership pursuant to an A-B-C Agreement, are sometimes referred to in the Certificate of Incorporation and rules of the Exchange as holders of equitable title.<sup>7</sup> Therefore, defining the term "owner" as a holder of equitable title is consistent with the provisions relating to lessors and member organizations who are parties to A-B-C Agreements (both of whom are types of owners) and should

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

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

<sup>3</sup> See Letter from Cindy Hoekstra, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 2, 2000 ("Amendment No. 1"). Amendment No. 1 defines the term "owner" for purposes of the Certificate of Incorporation. Because of the substantive nature of the amendment, the Commission deems the filing date of the proposed rule change to be the date the amendment was filed, May 3, 2000.

<sup>4</sup> The Commission approved the proposed rule change adopting Article Twentieth. See Securities Exchange Act Release No. 42317 (January 5, 2000), 65 FR 2215 (January 13, 2000) (SR-Phlx-99-48).

<sup>5</sup> See e.g., Phlx By-Law, Article I, Section 1-1(f): "The term 'lessor' means a holder of equitable title to a membership in the Exchange, including a former member of the Exchange, who has leased legal title to his membership to a lessee and has retained equitable title to such membership." See also Phlx Rule 17.

<sup>6</sup> The parties to an A-B-C Agreement are an employee, general partner, or officer, and the member organization with which such person is associated. See Phlx Rule 940.

<sup>7</sup> See e.g. Phlx Rules 17 and 940.

provide consistency throughout the Phlx's Certificate of Incorporation and rules.

## 2. Statutory Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>8</sup> in general, and with Section 6(b)(4)<sup>9</sup> in particular in that it provides for the equitable allocation of reasonable dues, fees and other charges.

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

The Exchange believes that the proposed rule imposes no inappropriate 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.

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

The proposed rule change has been filed by the Exchange pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> The Exchange represents that the proposed rule change:

- “(i) Does not significantly affect the protection of investors or the public interest;
- (ii) Does not impose any significant burden on competition; and
- (iii) Does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.”<sup>12</sup>

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

<sup>9</sup> 15 U.S.C. 78(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

The Exchange has requested that the Commission accelerate the operative date of the proposal. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description of the proposed rule change, more than five business days prior to the date of filing the proposed rule change.

The Exchange represents that the operative date of this proposed rule change should be accelerated because the Exchange intends to implement the monthly capital funding fee on all seat owners as part of a long term financing plan.<sup>13</sup> Prior to implementing this fee, the Exchange wants to ensure that it is clear exactly who will be subject to the fee by amending Article Twentieth to add the two categories, “owner” and “member organization,” and defining “owner.”<sup>14</sup>

The Commission finds that it is appropriate to designate this proposal to become operative today because such designation is consistent with the protection of investors and the public interest.<sup>15</sup> Specifically, the Commission believes that adding the two additional categories and defining “owner” will clarify the original intent of Article Twentieth, and that it is appropriate to accelerate the operative date of the proposed rule change.

## 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, NW,

<sup>13</sup> See Securities Exchange Act Release No. 42714 (April 24, 2000), 65 FR 25782 (May 3, 2000).

<sup>14</sup> Telephone conversation between Cindy Hoekstra, Counsel, Phlx, and Marla Chidsey, Attorney, Division of Market Regulation, Commission (May 11, 2000).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii). For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 5 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. 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-00-30 and should be submitted by June 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## DEPARTMENT OF STATE

### [Public Notice #3281]

### Shipping Coordinating Committee Council and Technical Cooperation Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:30 a.m. on Thursday, 1 June 2000, in Room 6319, at U. S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593-0001. The purpose of the meeting is to finalize preparations for the 84th session of Council and the 48th Session of the Technical Cooperation Committee of the International Maritime Organization (IMO) which is scheduled for 12-16 June 2000, at the IMO Headquarters in London. Discussions will focus on papers received and draft U.S. positions.

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).