

adjust options prices in line with the closing prices of the underlying securities.

In addition, quarterly rotations allow the execution at the end of the day of orders at a single price more efficiently. The closing rotation will also give investors and other interested parties more accurate closing prices for Phlx options on these high volume days. The Exchange believes that a specific rule governing quarterly closing rotation acts as notification to the investing public that a quarterly rotation may take place. However, the Exchange believes that the procedure described above also allows flexibility for those equity options series which do not experience increased activity, and, thus, will not be subject to a closing rotation.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act³ in general, and furthers the objectives of Section 6(b)(5)⁴ in particular, in that it is designed to promote just and equitable principles of trade and provide for a fair and orderly market by codifying specific provisions which allow the Exchange to conduct quarterly rotations in order to account for late prints and high amounts of order flow.

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

The Phlx represents that it does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

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 become effective pursuant to Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(1)⁶ thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. Phlx Rule 1047 currently provides the authority to floor officials to direct trading rotations in specific

option classes, thus the Exchange believes the proposal satisfies the requirements of Rule 19b-4(f)(1). This proposed rule change serves as clarification to note that there may be closing rotations in certain equity options on the last day of the calendar quarter.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the proposed 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.

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., 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. 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-00-27 and should be submitted by June 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42868; File No. SR-Phlx-99-26]

Self-Regulatory Organizations; Order Approving Proposed Amendment to the By-Laws and Corresponding Changes to the Rules of the Philadelphia Stock Exchange, Inc., Relating to Various Committees

May 31, 2000.

I. Introduction

On July 30, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change amending the Exchange's By-Laws and corresponding Phlx Rules to streamline its committee process. The Phlx filed Amendments No. 1 and No. 2 to the proposed rule change on October 4, 1999³ and February 23, 2000, respectively. The **Federal Register** published the proposed rule change, Amendment No. 1, and the substance of Amendment No. 2, for comment on March 6, 2000.⁴ The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of Proposal

The Exchange has proposed By-Law amendments to provide for streamlining the committee process as follows: (i) Dissolving the Arbitration Committee, whose limited remaining functions would be transferred to the Executive committee, who will oversee ongoing arbitrations filed before the transfer of arbitration responsibilities to the National Association of Securities Dealers, Inc. ("NASD") in October,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter to Michael Walinskas, Associate Director, Division of Market Regulation (Division"), Commission, from John Dayton, Counsel, Phlx, dated October 1, 1999 ("Amendment 1"). Amendment No. 1 proposes certain technical changes. Specifically, it amends Phlx Rule 930 to reflect the fact that the Arbitration Committee is being eliminated from the By-Laws. Amendment No. 1 also proposes changes to Phlx Rule 950, §§ 1 and 2, to reflect the elimination of the Arbitration Committee. The Phlx also submitted a letter (hereinafter referred to as "Amendment No. 2"), confirming that the board will continue to engage an independent auditing firm to administer all elections. The contents of Amendment No. 2 were substantively discussed in the notice.

⁴ Securities Exchange Act Release No. 42464 (Feb. 28, 2000), 65 FR 11826.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(1).

⁷ 17 CFR 200.30-3(a)(12).

1998;⁵ (ii) dissolving the Elections Committee and transferring its functions, along with those of the Nominating Committee, to the Nominating and Elections Committee; and (iii) consolidating the three Quality of Markets Committees into a single Quality of Markets Committee with responsibilities for all three Phlx trading floors.

First, the Exchange has proposed to amend its By-Laws to dissolve the Arbitration Committee and transfer its duties to the Executive Committee. The Phlx states that it ceased accepting arbitration cases on October 1, 1998 and that jurisdiction for Phlx arbitration cases now resides with the NASD. Currently, the Exchange is processing and closing the cases that were filed prior to October 1, 1998.⁶ Following the cessation of these cases, the arbitration function at the Exchange will cease, as will the need for any committee oversight of these matters.

Second, the Exchange has proposed several changes to the Nominating Committee and the Elections Committee, essentially collapsing them into a single committee. The Exchange proposes to eliminate the Elections Committee, and move its powers to the Nominating Committee. The Exchange also proposes to amend its By-Laws to change the name of the Nominating Committee to the Nominating and Elections Committee. The Exchange believes this change will help to streamline the functions of the two committees.

The Elections Committee administers membership elections. The Nominating Committee submits nominations for industry and non-industry Governors who stand for election by the members. Because these two Committees perform functions related to the election and appointment of Governors of the Exchange, the Exchange believes that the merging of the Elections Committee with the Nominating Committee will not impair the functioning of any of their tasks.⁷ The Exchange believes that

merging these responsibilities should improve efficiency as well as coordination, as the same group of committee members will oversee the complete election-related process.

Finally, the Exchange has proposed to reduce the number of Quality of Markets Committees from three to one, also to improve efficiency.⁸ In addition, the Exchange proposes to amend its By-Laws to ensure that the Committee will contain at least as many non-industry as industry members. The proposed language provides that “[t]he [Quality of Markets] Committee will have broad representation that shall include at least as many non-industry as industry Committee members.”⁹ The current language requires present committees to be “equally balanced”. The Exchange believes that the proposed language will give it more flexibility to constitute the proposed Committee while retaining the appropriate non-industry representation.

The Exchange believes that the consolidation of the Quality of Markets Committees should also improve the input of the committee on the overall committee process by taking advantage of the overlap in issues emanating from each of the three trading floors, as well as providing for more singular input. The Exchange further believes that this consolidation of committee functions will be beneficial to the functioning of the committee process by decreasing the number of committee assignments for some public, non-industry and industry Governors, allowing them to concentrate more of their energies to their remaining assignments, as well as lowering the costs associated with convening meetings. The Exchange believes the quality of information received from the committees by the Board of Governors will not be affected by the consolidation.

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. In particular, the Commission finds that the proposed rule change meets the requirements of Section 6(b)(5) of the Act,¹⁰ which states that, among other things, the rules of an exchange must be designed to facilitate

be submitted pursuant to Section 19(b)(1) of the Act.

⁸ Currently the Exchange has three separate Quality of Markets Committees for each of the three trading floors: equity, equity-index options, and foreign currency options.

⁹ See Proposed Phlx By-Law Art. X, § 10.20.

¹⁰ 15 U.S.C. 78f(b)(5).

securities transactions and to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. In addition, the Commission finds that the proposed rule change further the objectives of section 6(b)(3)¹¹ which requires an exchange’s rules, among other things, to be designed to assure a fair representation of its members in the administration of its affairs.¹²

The Commission believes that it is reasonable for the Exchange to dissolve the Arbitration Committee and transfer its remaining duties to the Executive Committee. The Commission notes that the NASD has jurisdiction over Phlx arbitration cases filed after October 1, 1998 and that following the completion of cases filed before October 1, 1998, the Exchange will have no arbitration duties.¹³ In addition, the Commission believes that the Executive Committee is fully capable of overseeing the adjudication of the remaining cases. The Commission also notes that although the Executive Committee contains more members (9) than the current Phlx Arbitration Committee (4), the members of the Executive Committee represent varying interests similar to the Arbitration Committee and include on-floor, off-floor, and non-industry (including one public) members.

The Commission also believes that it is reasonable for the Exchange to combine the Nominating Committee and the Elections Committee into one committee—the Nominating and Elections Committee. These committees perform distinct but related functions. As noted above, the Elections Committee oversees the election process while the Nominating Committee submits nominations for industry and non-industry governors who stand for election by the members. While the Commission believes it is within the Phlx’s business judgment in determining that the merged committees should be able to function more efficiently as a single unit, we are concerned about assuring that elections are administered fairly and adequately monitored. The Commission notes that the Exchange has addressed this by committing itself to continue its current practice of engaging an independent auditing firm to administer all Exchange elections. The Commission believes that this safeguard will help to ensure that all Exchange elections, particularly

¹¹ 15 U.S.C. 78f(b)(3).

¹² 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).

¹³ See *supra*, note 6.

⁵ See Securities Exchange Act Release No. 40517 (Oct. 1, 1998), 63 FR 54177 (Oct. 8, 1998) (SR-Phlx-98-28).

⁶ As of May 26, 2000, one case is currently pending with the Arbitration Committee that would be transferred to the Executive Committee. Potentially twelve arbitration cases in federal court could be transferred back to the Phlx. Phone call between John Dayton, Counsel, Phlx, and Sonia Patton, Attorney, Division, Commission, on May 26, 2000.

⁷ The Commission notes that the Exchange currently has a policy of engaging an independent auditing firm to administer elections. This practice will continue following the merger of the Nominations Committee and the Elections Committee. See Amendment No. 2, *supra* note 3. Of course, any changes to the practice would have to

contested elections, will be administered in a manner that is fair to all participants in the election process.

Finally, the Commission believes that it is reasonable for the Exchange to consolidate all three of its Quality of Markets Committees into one Quality of Markets Committee responsible for all three Phlx trading floors. The Commission does not disagree with the Phlx's conclusion that the resulting committee could function more efficiently by taking advantage of the overlap in issues that face each of the three current committees. The Commission notes that the resulting committee will be required to contain at least as many non-industry as industry members, which will ensure that the committee will retain appropriate non-industry representation. While current rules require each of the Quality of Markets Committees to be "equally balanced," the new language will, in the Phlx's view, give it more flexibility in the new committee's composition. Without specifically addressing this issue, the Commission simply notes that by requiring the newly merged committee to be comprised of broad representation with at least the same number of non-industry and industry directors, the new rule language should ensure that the composition of the new Quality of Markets Committee is consistent with the section 6(b)(3) requirement for fair representation in the administration of the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-PHLX-99-26), as amended, is approved.

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. 34-42883; File No. SR-Phlx-00-40]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Proposing To Amend Phlx By-Law Article IV, Section 4-18

June 1, 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 21, 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 and II below, which Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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, sections 4-18(a) and (e) by expanding its indemnification and insurance coverage to directors and committee members of the Exchange. Below is the text of the proposed rule change. New language is *italicized*.

By-Law Article IV

Indemnification

Sec. 4-18.(a) Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was Governor, officer, or committee member of the Exchange or is or was serving at the request of the Exchange as an officer, *director*, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a Governor, officer, *committee member*, *director*, employee or agent or in any other capacity while serving as a Governor, officer, *committee member*, *director*, employee or agent, shall be indemnified and held harmless by the Exchange to the fullest extent authorized by

the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Exchange to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including attorney's fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee who has ceased to be a Governor, officer, *committee member*, *director*, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as provided in paragraph (c) hereof with respect to proceedings to enforce rights to indemnification, the Exchange shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Governors of the Exchange.

Section 4-18(b) through (d). No change.

Sec. 4-18.(e) Insurance. The Exchange may maintain insurance, at its expense, to protect itself and any Governor, officer, committee member, *director*, employee or agent of the Exchange or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Exchange would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

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

The Phlx represents that the purpose of the proposed rule change is to clarify the original intent of the Exchange, by expanding the Exchange's indemnification and insurance coverage to include persons serving at the request of the Exchange as a Governor, officer, committee member, *director*, employee, or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan. Although Governors, officers,

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.