

proceedings by the Exchange's Business Conduct Committee pursuant to Phlx Rules 960.6(c) and 960.8. Currently, decisions made in disciplinary proceedings are appealed in accordance with Phlx By-Law Article XI. The procedures set forth in the Phlx's By-Laws, however, were not strictly formulated for disciplinary matters, and, as a result, are often silent on unique issues that apply to disciplinary matters. To ensure that appeals in disciplinary proceedings are accomplished in a consistent and orderly manner, the Exchange expanded the procedures in Phlx Rule 960.9 into four categories: (a) Petition by Respondent; (b) Conduct of Review; (c) Review on Motion by Board of Governors; and (d) Petition by Enforcement Staff.

The proposed amendment to paragraph (a) of Phlx Rule 960.9 is intended to provide time guidelines for requesting an appeal. The Respondent's petition for appeal must be in writing and filed with the Secretary of the Exchange within 10 days after service of notice and a copy of the decision of the Business Conduct Committee. The petition must specify the findings and conclusions that are the subject of the petition, along with the reasons the Respondent is petitioning for review. Exchange Enforcement Staff will have 15 days to file a written response. The Respondent may then file a reply within 15 days after service of the Enforcement Staff's response.

Paragraph (b) of the proposed rule, "Conduct of Review," provides that the review shall be conducted by the Exchange's Board of Governors ("Board"), or an Advisory Committee made up of three Governors, with at least one being a non-industry Governor appointed by the Chairman of the Board. No Governor who was a member of the hearing panel below may participate in the hearing on review. Unless the Board of Governors or Advisory Committee hearing the review allows oral argument, the review will be based solely on the record below. If an Advisory Committee hears the review, it must submit a written report to the Board.

Sub-paragraphs (b)(ii) and (iii) of the proposed rule set forth the standard of review for the Board or Advisory Committee. The decision of the Business Conduct Committee can be affirmed, reversed or modified, in whole or in part. A modification may include an increase or decrease of the sanction. However, neither the Board nor the Advisory Committee may reverse or modify the findings, conclusions, and decision of the Business Conduct Committee if the factual conclusions in

the decision are supported by substantial evidence, and such decision is not arbitrary, capricious or an abuse of discretion.

In paragraph (c), the proposed rule change includes procedures for a review by the Board of Governors on its own initiative. The review would follow the procedure set forth in paragraph (b) of the proposed rule. Together, these provisions are intended to establish a standard and process of review.

Finally, paragraph (d) of the proposed rule sets forth the procedures by which the Exchange's Enforcement staff may petition the Board for permission to appeal. The petition must specify the findings and conclusions that are the subject of the petition, along with the reasons the staff is petitioning for review. If the Board grants permission, the Exchange's Enforcement staff must serve a copy of the petition on the Respondent within 5 days. The respondent then has 15 days to file a written response with the Board, and the staff would have 15 days to file a reply.<sup>4</sup>

## II. 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 Sections 6(b)(6) and 6(b)(7).<sup>5</sup> Section 6(b)(6) requires that members and persons associated with members be appropriately disciplined for violation of any provision of the Act, the rules and regulations thereunder, or the rules of the Exchange. Section 6(b)(7) of the Act requires, among other things, that the rules of the Exchange provide a fair procedure for the disciplining of members and persons associated with the members.

Currently, the Phlx does not have detailed procedures for appeals from decisions in summary and regular disciplinary proceedings. The Commission believes that the proposed procedures in Phlx Rule 960.9 could provide for a more appropriate and fair disciplinary procedure. For example, paragraphs (b) and (c) of revised Rule 960.9 set forth a standard of review the Board of Governors or the Advisory Committee must follow in deciding whether to affirm, reverse or modify the

<sup>4</sup> Review of appeals initiated by the Exchange's Enforcement staff will be conducted in accordance with the procedure set forth in paragraph (b) of the proposed rule. Telephone conversation between Charles Falgie, Director of Enforcement, Phlx, and Anitra Cassas, Special Counsel, Division of Market Regulation, Commission, on October 3, 2000.

<sup>5</sup> 15 U.S.C. 78f(b)(6) and (b)(7).

decision of the Business Conduct Committee. The Commission believes that explicit standards will help ensure that decisions in disciplinary proceedings are not rendered arbitrarily.

The Commission also believes that the clear time guidelines set forth in paragraphs (a), (c), and (d) enhance the fairness of the disciplinary procedure. Currently, Phlx Rule 960.9 only dictates the time a respondent has to file an appeal. Under the proposal, the expanded procedures in Rule 960.0 layout the timetable for responses and replies to be filed. Thus, respondents and the Exchange's Enforcement staff will not be subjected to unnecessary delays. The Commission believes this is a more fair procedure because it brings a measure of finality to disciplinary proceedings.

## III. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-PHLX-00-52) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43585; File No. SR-Phlx-00-98]

### Self-Regulatory Organizations; Notice of Filing of Proposed By-Law Change by the Philadelphia Stock Exchange, Inc., Relating to Allocation, Evaluation and Securities Committee

November 17, 2000.

Pursuant to Section 10(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on November 7, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed by-law change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed by-law change from interested persons.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 U.S.C. 240.19b-4.

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

The Phlx proposes to amend its By-Law, Article X, Section 10-7—Options Allocation, Evaluation and Securities Committee and Equity Allocation, Evaluation and Securities Committee. The proposed amendment would clarify that references to the "Allocation, Evaluation and Securities Committee" in the Exchange By-Laws and Rules may mean either the Options Allocation, Evaluation and Securities Committee or the Equity Allocation, Evaluation and Securities Committee, as the context requires. The text of the proposed by-law change is set forth below. New language is in italics.

Article X, Section 10-7(e)

*For purposes of these By-Laws, and Exchange Rules, references to the "Allocation, Evaluation and Securities Committee" shall mean either the Options Allocation, Evaluation and Securities Committee or the Equity Allocation, Evaluation and Securities Committee, as the context requires.*

### 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 by-law change and discussed any comments it received on the proposed by-law change. The text of these statements may be examined at the places specified in Item IV below. The Phlx 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

On July 5, 2000, the Commission approved changes to Phlx By-Law Article X, Section 10-7, which divided the Allocation, Evaluation and Securities Committee into two separate committees: The Options Allocation, Evaluation and Securities Committee and the Equity Allocation, Evaluation and Securities Committee.<sup>3</sup> Currently, various sections of the Exchange's by-laws and rules simply refer to the "Allocation, Evaluation and Securities Committee." The proposed amendment

to Article X, Section 10-7(e) of the Phlx's by-laws would provide that any reference to the "Allocation, Evaluation and Securities Committee" would mean either the Options Allocation, Evaluation and Securities Committee or the Equity Allocation, Evaluation and Securities Committee, as the context requires.

The purpose of the proposed by-law amendment is to clarify that references to the "Allocation, Evaluation and Securities Committee" in the Exchange's by-laws and rules may mean either the Options Allocation, Evaluation and Securities Committee or the Equity Allocation, Evaluation and Securities Committee, as the context requires, and to ensure that the by-laws and rules pertaining to each committee remain consistent.

#### 2. Statutory Basis

The Phlx believes the proposed rule change is consistent with Section 6 of the Act<sup>4</sup> in general and with Section 6(b)(5)<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by enabling the Exchange to provide a responsive administrative process with respect to the operation of the Options Allocation, Evaluation and Securities Committee and the Equity Allocation, Evaluation and Securities Committee, consistent with the Exchange's by-laws and rules.

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

The Phlx does not believe that the proposed by-law change would impose any inappropriate burden on competition.

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

No written comments were solicited or received.

### 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 with 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 by-law 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 by-law change that are filed with the Commission, and all written communications relating to the proposed by-law 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 filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-00-98 and should be submitted by December 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SMALL BUSINESS ADMINISTRATION

#### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of Reporting Requirements Submitted for OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before December 29, 2000. If you intend to comment but cannot prepare comments

<sup>3</sup> See Securities Exchange Act Release No. 43011 (July 5, 2000), 65 FR 43069 (July 12, 2000) (File No. SR-Phlx-00-28).

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 17 CFR 200.30-3(a)(12).