

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 PCX.

All submissions should refer to File No. SR-PCX-00-43 and should be submitted by February 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-1194 Filed 1-12-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43812; File No. SR-Phlx-99-50]

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

January 5, 2001.

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 23, 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 December 28, 2000.³ 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

a. The Original Filing

The Phlx proposes to amend its Certificate of Incorporation to add Article Nineteenth, relating to the leasing of memberships.⁴ A complete copy of the text of Article Nineteenth is available at the Office of the Secretary, the Phlx, and at the Commission.

Proposed Article Nineteenth provides that, in addition to all other powers granted to the 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 lease agreements, lessors and lessees as the Board may from time to time determine to be advisable. Such rules may include rules regulating and setting forth the rights and obligations of lessors and lessees, the required terms of lease agreements, and the fees, dues, and other charges required to be paid by lessors and lessees (or either of them) to the Exchange in connection with, and for the privilege of, leasing memberships. In addition, proposed Article Nineteenth provides that the Board shall have the power to adopt rules relating to the suspension or termination of any or all lease agreements with respect to memberships, to issue provisional trading privileges on such terms as the Board shall determine to members whose lease agreements are suspended or terminated, and to amend, alter, or repeal any or all of the Rules of the Board with respect to any of the foregoing matters.

⁴ In connection with this proposed rule change, the Commission approved a propose rule change that adopted Article Twentieth. See Securities Exchange Act Release No. 42317 (January 5, 2000), 65 FR 2215 (January 13, 2000) (SR-Phlx-99-48). Article Twentieth provides, in part, that the Exchange's Board of Governors ("Board") shall have the power to assess such fees, dues, and other charges upon members, lessors and lessees of memberships and holders of permits (or any of them) as the Board may from time to time adopt by resolution or set forth in the Rules of the Board. On May 11, 2000 the Commission approved a proposed rule change, which amended Article Twentieth to include the words "owner" and "member organization" and to define the word "owner" to clarify the original intent of Article Twentieth. See Securities Exchange Act Release No. 42773 (May 11, 2000), 65 FR 31622 (May 18, 2000) (SR-Phlx-00-30).

b. Amendment No. 1

As a non-stock corporation organized under the Delaware General Corporation Law ("DGCL"), the Exchange represents that it has ample authority to adopt proposed Article Nineteenth. Because the Exchange's Certificate of Incorporation does not require member approval to adopt a charter amendment, proposed Article Nineteenth may be adopted by the Board of Governors without approval by the members of the Exchange (including lessees of memberships) or the owners of memberships (including lessors of memberships). 8 *Del. C.* § 242(b)93.⁵ Therefore, the Exchange's Board adopted Article Nineteenth in accordance with Section 242.

Furthermore, Section 141(j) of the DGCL empowers the Board to direct the business and affairs of the Exchange, and the Exchange's by-laws give the Board broad power to adopt rules of the Exchange. 8 *Del. C.* § 141(j);⁶ By-Law Art. IV, § 4-4. In addition, existing Article Third of the Phlx Certificate of Incorporation gives the Exchange authority to do all things necessary to run a national securities exchange.⁷ Numerous provisions of the Exchange's by-laws and rules already address matters similar to those addressed by proposed Article Nineteenth.⁸ Therefore, the adoption of Article Nineteenth falls within the broad authority expressly conferred by Delaware law and existing provisions under the Phlx Certificate of Incorporation.

⁵ Section 242 of the DGCL permits the board of a non-stock corporation to adopt amendments to the corporation's Certificate of Incorporation.

⁶ See also 8 *Del. C.* § 121(a) (providing that in addition to powers expressly granted by law or the Certificate of Incorporation, the corporation and its directors may exercise "any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation").

⁷ Article Third states, in part, that the Exchange may operate as and perform all functions of a national securities exchange and engage in any lawful act or activity for which corporations may be organized under the DGCL.

⁸ See, e.g., By-Law Art. XV, § 15-1(a) (providing that a membership may be leased in accordance with such rules as the Board may adopt); Rule 930 (setting forth required terms of lease agreement and providing, among other things, that the Exchange may dispose of a membership subject to a lease agreement); Rule 960.1 (providing that all members, member organizations and any persons associated with any member are subject to expulsion, suspension, termination as to activities at the Exchange or any other fitting sanction for violation of the Rules of the Exchange); see also Certificate of Incorporation, Article 20th (giving Board plenary authority to assess fees, dues and other charges and to impose penalties, including cancellation of a membership and forfeiture of all rights as a lessor or lessee, for nonpayment).

¹⁸ CFR 200.30-2(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 Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 27, 2000 ("Amendment No. 1"). In Amendment No. 1, the Phlx represented that the Phlx's Board has the authority to adopt Article Nineteen pursuant to Delaware corporate law, Pennsylvania contract law, and the Exchange's Certificate of Incorporation, by-laws, and rules.

Pursuant to Article Nineteenth, the Board would have the authority to make rules that impact lease arrangements, including adopting rules relating to the termination of lease agreements. As discussed, the Exchange's Certificate of Incorporation, by-laws and rules already include several provisions addressing such authority.⁹ Moreover, the Exchange's by-laws require lessors and lessees (as members) to pledge to abide by the rules as they may be amended from time to time.¹⁰

Accordingly, under the DGCL and the Exchange's Certificate of Incorporation, by-laws, and rules, the Exchange represents that its Board of Governors has the authority to adopt Article Nineteenth without approval thereof by members, or by owners, lessors, or lessees of memberships.

Proposed Article Nineteenth is also permissible as a matter of Pennsylvania contract law. The provisions of Article Nineteenth authorizing the adoption of rules affecting lease agreements between lessors and lessees are lawful because, under the terms of its relationships with both lessors and lessees, the Exchange has the right to adopt by-laws, rules, or regulations that affect those lessors and lessees. Pennsylvania law holds that a contracting party may lawfully exercise its own contractual rights against another party to the contract, even if doing so interferes with the terms of a separate agreement of the other party. Here, the potential suspension or termination of a lease agreement in accordance with the rules of the Exchange is permissible under the terms of the Exchange's separate agreements with each of the parties to the lease agreement.

Both lessors and lessees (as members) agree respectively as a condition of approval of the right to lease seats and as a condition of approval for membership that the Exchange may effectuate changes to their lease agreements, including termination. As a condition of the right to lease their seats, lessors agree "to abide by the

[Exchange's] By-Laws as they have or shall be from time to time amended, and by all rules and regulations adopted pursuant to the By-Laws." See By-Law Art. XII, § 12-9(b). Lessees (as members) likewise make the same commitment. See *id.* at 12-9(a). By agreeing to abide by future by-laws, rules, and regulations, lessors and lessees necessarily grant permission to the Exchange to adopt rules pursuant to which their lease agreements may be suspended or terminated. Indeed, the Exchange has already repeatedly exercised its right to adopt rules and by-laws directly impacting lessors and lessees in a variety of rules, including Rule 930, which closely regulates the terms and conditions of lease agreements.¹¹ Accordingly, article Nineteenth, which would provide in express form the authorization for the adoption of rules suspending or terminating lease agreements, would simply authorize that which is countenanced by the terms of the Exchange's existing relationships with lessors and lessees, and is thereby permissible as a matter of Pennsylvania contract law.

Proposed Article Nineteenth was properly adopted by the Exchange Board under Delaware law and is permissible as a matter of Pennsylvania contract law. As a result, the Exchange believes it should take effect in accordance with its terms following SEC approval and the filing of Article Nineteenth with the Secretary of State of the State of Delaware.

II. Self-Regulatory Organization's Statement Regarding the Purpose of, and 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

The purpose of the proposed rule change is to amend the Exchange's Certificate of Incorporation to provide for specific authority regarding the regulation of leases, including the rights and obligations of lessors and lessees. Article Nineteen will enable the Board to adopt and oversee specific rules relating to the leasing of memberships to protect and promote the best interests of the Exchange.

The Exchange acknowledges that any such rules or resolutions, which are adopted by the Board, shall be filed with the Commission to the extent required pursuant to Section 19(b) of the Act¹² and Commission rules thereunder. Moreover, it is intended that such rules or resolutions proposed by the Exchange and related to the leasing of memberships, primarily in connection with the termination or suspension of lease agreements, shall delineate, if applicable, the notice and procedural requirements that address any potentially adversely affected party to be followed prior to terminating or suspending a lease agreement.

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act,¹³ in general, and with Section 6(b)(5),¹⁴ in particular, in that it promotes just and equitable principles of trade and protects investors and the public interest by enabling the Board to determine whether, and under what terms and conditions, memberships may be leased.

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

Written comments were neither solicited nor received 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

⁹ See, e.g., Certificate of Incorporation, article Thirteenth (lessor entitled to vote on compromise or arrangement); Certificate of Incorporation, Article Seventeenth (lessor entitled to receive any distribution of assets upon liquidation); By-Law Article I, Section 1-1 (defining lessor and lessee); By-Law Article XII, Section 12-8 (authorizing lessor application fee as fixed from time to time by the Board, lessor initiation fee and fee upon transfer of equitable title to a membership); and Rule 930 (setting forth required terms of lease agreements).

¹⁰ See Exchange By-Law Article XII, Section 12-9. As a condition of the right to lease their seats, lessors agree "to abide by the [Exchange's] By-Laws as they have or shall be from time to time amended, and by all rules and regulations adopted pursuant to the By-Laws." Lessees, as members, likewise make the same commitment.

¹¹ Other examples include By-Law Art. I, § 1-1 (defining lessor and lessee); By-Law Art. XII, § 12-1 (a member conducts business on the Exchange); By-Law Art. XII, § 12-8 (authorizing lessor application fee, lessor initiation fee, and fees upon transfer of equitable title); By-Law Art. XIV, §§ 14-1, 14-2, 14-5 (the Exchange can impose charges on members, including penalties for non-payment of fees); By-Law Art. XV, § 15-1 (the Exchange approves lessees); Rule 931 (the Exchange approves lessors); Rule 960.1 *et seq.* (the Exchange may discipline members).

¹² 15 U.S.C. 78s(b).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

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 Phlx 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 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-99-50 and should be submitted by February 6, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This

rate will be 5.875 (57/8) percent for the January-March quarter of FY 2001.

LeAnn M. Oliver,

Deputy Associate Administrator for Financial Assistance.

[FR Doc. 01-1200 Filed 1-12-01; 8:45 am]

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. § 2242), requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. (Section 182 is commonly referred to as the "Special 301" provisions in the trade act.) In addition, the USTR is required to determine which of these countries should be identified as Priority Foreign Countries. Acts, policies or practices which are the basis of a country's identification as a priority foreign country are normally the subject of an investigation under the Section 301 provisions of the trade act. Section 182 of the Trade Act contains a special rule for the identification of actions by Canada affecting United States cultural industries.

USTR requests written submissions from the public concerning foreign countries' acts, policies, and practices that are relevant to the decision whether particular trading partners should be identified under Section 182 of the Trade Act.

DATES: Submissions must be received on or before 12:00 noon on Friday, February 16, 2001.

ADDRESSES: 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Deputy Assistant U.S. Trade Representative for Intellectual Property (202) 395-6864; Kira Alvarez or John Desrocher, Directors for Intellectual Property (202) 395-6864, or Stephen Kho, Assistant General Counsel (202) 395-3851, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Pursuant to Section 182 of the Trade Act, the

USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as Priority Foreign Countries. Acts, policies or practices that are the basis of a country's designation as a Priority Foreign Country are normally the subject of an investigation under the Section 301 provisions of the Trade Act.

USTR may not identify a country as a Priority Foreign Country if it is entering into good faith negotiations, or making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

In identifying countries that deny adequate and effective protection of intellectual property rights in 2001, USTR will continue to pay special attention to other countries' efforts to reduce piracy of optical media (music CDs, video CDs, CD-ROMs, and DVDs) and prevent unauthorized government use of computer software. USTR will also focus on countries' compliance with their WTO TRIPS obligations, which for developing country members came due on January 1, 2000.

Section 182 contains a special rule regarding actions of Canada affecting United States cultural industries. The USTR is obligated to identify any act, policy or practice of Canada which affects cultural industries, is adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). Any such act, policy or practice so identified shall be treated the same as an act, policy or practice which was the basis for a country's identification as a Priority Foreign Country under Section 182(a)(2) of the Trade Act, unless the United States has already taken action pursuant to Article 2106 of the NAFTA.

USTR must make the above-referenced identifications within 30 days after publication of the National Trade Estimate (NTE) report, *i.e.*, no later than April 30, 2001.

Requirements for Comments

Comments should include a description of the problems experienced and the effect of the acts, policies and practices on U.S. industry. Comments should be as detailed as possible and should provide all necessary