

reasonable and provide fair procedures for appropriately disciplining members and member organizations for minor rule violations that warrant some type of punitive measure, but for which a full disciplinary hearing would be an inappropriate waste of resources because of the minor nature of the violation. The Commission believes that the proposed change to the existing fine schedule is appropriate and should serve to discourage violations of the Exchange's telephone policy.

The Commission supports the Exchange's efforts to codify policies on telephone use to give its membership adequate notice of what conduct is prohibited, while supporting the Exchange's efforts to monitor and regulate communications on its options floor, the Commission expects the Phlx to ensure that Phlx Rule 606(e) is not used to limit access to services offered by the Exchange and is not applied in a manner that is inconsistent with the Act. Specifically, the Commission expects that Phlx Rule 606(e) will not be interpreted in a manner that permits unfair discrimination between customers, issuers, brokers, or dealers or imposes any unnecessary or inappropriate burden on competition, or is otherwise used to limit member access to Exchange services.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-PHLX-00-48), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43989; File No. SR-Phlx-00-94]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Prohibition to Harassment and Other Improper Behavior Because of Listing or Competitive Practices

February 20, 2001.

I. Introduction

On November 13, 2000, 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 and Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to add new Commentary .01 ("Prohibition Against Harassment") to the Exchange's Rule 707 ("Just and Equitable Principles of Trade"), to prohibit members, member organizations, or persons associated with or employed by members or member organizations from engaging in harassment and other improper behavior because of listing or competitive practices.

The proposed rule change was published for comment in the **Federal Register** on December 28, 2000.³ No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The Phlx proposes to add new Commentary .01 ("Prohibition Against Harassment"), to prohibit members, member organizations, or persons associated with or employed by members or member organizations from engaging in harassment and other improper behavior because of listing or competitive practices.

Specifically, proposed new Commentary .01 to Phlx Rule 707 would state that it is conduct inconsistent with just and equitable principles of trade for any member, member organization, or person associated with or employed by a member or member organization to directly or indirectly threaten, harass, intimidate, refuse to deal with, or retaliate against any member, member organization, person associated with or employed by a member or member organization, or other market participant because such member, member organization, person associated with or employed by a member or member organization, or other market participant has: (i) Made a proposal to any exchange or other market to list or trade any option class; (ii) advocated or proposed to list or trade an option class on any exchange or other market; (iii) commenced making a market in or trading new option class on any exchange or other market; (iv) sought to increase the capacity of any options exchange or the options industry to disseminate quote or trade data; (v) sought to introduce new option

products; or (vi) acted, or sought to act, competitively.

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,⁴ and in particular, with the requirements of section 6 of the Act.⁵ Specifically, the Commission finds that the proposal is consistent with sections 6(b)(5) of the Act⁶ in that it is designed to codify the Exchange's prohibition against harassment and improper practices in a manner that promotes just and equitable principles of trade, prevents fraudulent and manipulative acts and practices, maintains fair and orderly markets, and protects investors and the public interest.

Phlx's new Commentary .01 to Phlx Rule 707 provides generally that it is conduct inconsistent with just and equitable principles of trade for market members, member organizations, their employees, and associated persons engage in harassing and certain improper retaliatory actions as a result of another market participant's listing or competitive behavior. The Commission believes that this codification of existing practice in Phlx's Rules is a reasonable means to comply with the Commission's directive,⁷ and to prevent fraudulent and manipulative acts and practices, maintain fair and orderly markets, and protect investors and the public interest, as required by section 6(b)(5) of the Act.

IV. Conclusion

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Phlx-00-94) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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⁴ 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).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ See note 4, *supra*.

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 43739 (December 19, 2000), 65 FR 82440.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).