

necessary or appropriate in furtherance of the purposes of the Act.

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

The Phlx neither solicited nor received any written comments.

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)(i) of the Act⁶ and subparagraph (f)(1) of Rule 19b-4 thereunder⁷ because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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 proposal 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 amendment, all written statement 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 number SR-Phlx-2001-55 and should be submitted by June 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-14461 Filed 6-7-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44386; File No. SR-Phlx-2001-45]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change Amending Rule 930

June 4, 2001.

On April 20, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 to amend Rule 930 to add paragraph (k).

Rule 930(k) relates to the Exchange's ability to allow a member who leases a membership ("lessee") to pay past-due fees owed to the Exchange by the lessor under a lease agreement, on behalf of the lessor. Rule 930(k) states that the Exchange is a third party beneficiary of the lease agreement, and shall have the right to permit payment by a lessee of past-due fees owed to the Exchange by the lessor. The Rule further states that should the lessee pay such past due amounts, the lessee shall provide written notice to the lessor and the Exchange. Once the lessee has elected to make such payments, the lessee may continue to make such payments for a period of up to three months and set off such amounts, with notice to the Exchange and lessor against amounts due the lessor by the lessee. Furthermore, Rule 930(k) states that notwithstanding the terms of the lease agreement, a lessee will not be considered in default of the lease agreement solely by virtue of having elected to make such payments. The Exchange also amended Rule 930 to make certain minor technical amendments to the text of the rule in order to make the various paragraphs contained in the rule more consistent.

The proposed rule change was published for comment in the **Federal Register** on May 2, 2001.³ The

Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange⁴ and, in particular, the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with the requirement of Section 6(b)(5)⁶ because it is designed to promote just and equitable principles of trade and to protect investors and the public interest by enabling lessees to continue trading on the Exchange even when their respective lessors fail to pay fees owed the Exchange when due.

The Commission is not required under Section 19(b)(2) of the Act⁷ to find that a proposed rule change by a self-regulatory organization is lawful under state corporation law; in approving this proposal, the Commission is relying on the Phlx's representation that it has the general power under applicable provisions of Delaware law to modify Rule 930 by adding paragraph (k). The Commission is also relying on the Phlx's representations that proposed Rule 930(k) is permissible under Pennsylvania contract law. The Commission has not independently evaluated the accuracy of Phlx's representations regarding Delaware or Pennsylvania law.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Phlx-2001-45) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-14462 Filed 6-7-01; 8:45 am]

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⁴ In approving this proposed rule change, the Commission has considered the proposal'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 15 U.S.C. 78s(b)(2).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 44220 (April 25, 2001), 66 FR 22059.

⁶ 15 U.S.C. 78s(b)(3)(A)(i).

⁷ 17 CFR 240.19b-4(f)(1).