

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44819; File No. SR-PHLX-2001-74]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Phlx By-Law Article XII, Section 12-4 and Article XV, Sections 15-1 and 15-2

September 19, 2001.

Pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 7, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change 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 rule change from interested persons.

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

The Phlx proposes to: (i) amend Phlx By-Law Article XII, Section 12-4 and Article XV Sections 15-1 and 15-2 to reduce the current 14-day posting period for membership and foreign currency options participation transfers to seven days;<sup>3</sup> (ii) change the notice of posting from the Exchange bulletin board to the Phlx website while retaining publication in the Secretary's Weekly Bulletin; and (iii) allow the

Chairman or his designate to reduce the posting period as deemed appropriate upon determination that such action is in the best interests of the Exchange. The following is the text of the proposed rule change. Additions are in italics and deletions are in brackets.

#### ARTICLE XII

##### Application

Sec. 12-4 Application

(a) No change.

(b) No change.

(c) No change.

(d) If the admissions Committee votes favorably upon the Candidate, his name shall be posted upon the [bulletin board] *website* of the Exchange for a period of [fourteen] *seven* days and shall also appear in the Secretary's Weekly Bulletin [mailed] to the membership. An objection by a member of the Exchange to the election of a candidate for membership or to the admission of a non-member as a foreign currency options participant shall be in writing addressed to the Admissions Committee[.] *and filed at any time with the Office of the Secretary.*

(e) If during the [fourteen] *seven-day* posting period no objection to the election of the applicant to membership or to the admission of the non-member as a foreign currency options participant has been received, his election to membership or his admission as a foreign currency options participant shall become effective upon the expiration of the posting period and upon his acquisition by transfer of an Exchange membership or of a foreign currency options participation, as the case may be.

(f) No change.

(g) If during the [fourteen] *seven-day* posting period an objection or objections to the election of the applicant to membership or to the applicant's admission as a foreign currency options participant have been received, the Committee shall reconsider its favorable vote on the candidate upon the expiration of such period. If the Committee reaffirms its favorable vote the applicant shall thereupon be elected to membership or be admitted as a foreign currency options participant upon his acquisition by transfer of an Exchange membership or of a foreign currency options participation, as the case may be. If the committee rescinds its favorable vote, changing it to unfavorable, the applicant shall have the rights of notice, hearing and review as provided in subsection (f) of this section. If, after hearing and review, unfavorable action on his application is reversed, his election to

membership or his admission as a foreign currency options participant shall become effective in accordance with this subsection (g) and without the requirement of an additional posting period.

(h) No change.

(i) *The Chairman or his designate may in his discretion, reduce any membership and/or participation related notice and/or posting period requirements including, without limitation, any such requirements involving new members or participants and concerning transfers of memberships or foreign currency options participations, as the chairman or his designate shall determine that such action is in the best interests of the Exchange.*

*The Chairman or his designate may condition any reduction of the posting period upon receipt of an indemnification or other form of security which he or his designate deems adequate to protect the interests of the Exchange, members, member organizations, participants, participant organizations, investors and the public interest.*

#### ARTICLE XV

##### Transfer of Membership

##### Transfer of Membership—Notice

SEC. 15-1. A transfer of membership shall be made upon submission of the name of the candidate to and the approval of the transfer by the Admissions Committee. Notice of the proposed transfer shall be sent to each member of the Exchange at least [fourteen] *seven* days prior to transfer, which notice shall specify the date on which the proposed transfer will become provisionally effective. The lease of legal title to a membership or reversion thereof shall be deemed to be a transfer of membership under this Article. The transfer of equitable title only shall not be deemed to be a transfer of membership under this Article.

##### Exceptions to Notice—No change

##### Transfer of Equitable Title

A transfer of equitable title only to a membership shall be made upon submission of the name of the candidate to the Admissions Committee. A transfer may not be effected pursuant to a lease agreement. Notice of this transfer shall be posted upon the [bulletin board] *website* of the Exchange and shall also appear in the Secretary's Weekly Bulletin mailed to the membership at least [fourteen] *seven* days in advance of

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> As required by Exchange By-Law Article XXII, Section 22-2, the Exchange issued notice of the proposed By-Law amendments to Articles XII and XV to its membership on April 11, 2001 and July 10, 2001, respectively. The Exchange represents that it did not receive a request from 17 or more members for a special meeting of the Exchange to consider the proposed amendment. As a result, the Board approved the proposed amendment to By-Law Article XII on May 16, 2001, and approved the proposed amendment to By-Law Article XV on August 1, 2001. Telephone conversation between Murray L. Ross, Vice President and Secretary, Phlx, Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division") Commission, and Sonia Patton, Special Counsel, Division, Commission (September 13, 2001).

the transfer's effective date. Notice of the proposed transfer shall specify the date on which the proposed transfer will become effective.

Lease of Membership—No change

### Contracts of Transferor

SEC. 15-2. A member proposing to transfer his membership shall not, after the [fourteenth] *seventh* day of notice of the proposed transfer, make any contracts on the floor of the exchange facility pending the effective date of the proposed transfer unless the contract is expressly made on behalf of another member of the exchange or on behalf of a member firm which will continue to be a member firm notwithstanding the completion of such transfer or unless the member is also a foreign currency options participant and is proposing to transfer only his foreign currency options participation (in which case the member shall be prevented only from making any foreign currency option contracts on the floor of the exchange facility after the [fourteenth] *seventh* day of notice of the proposed transfer unless either of the exceptions set forth above applies).

No contract made by a member proposing to transfer his membership or by his firm after the said [fourteenth] *seventh* day shall if the transfer becomes effective, be the basis of a claim against the proceeds of the transfer thereof under subdivision Third of Section 15-3 of this Article, but may, if the transfer is to another partner in the member firm in which the transferring member is a partner, constitute the basis of a claim under said subdivision Third of Section 15-3, against the proceeds of the subsequent transfer of such membership by the partner to whom it is transferred.

On the [fourteenth] *seventh* day after notice of a proposed transfer of membership has been mailed to the membership, all exchange contracts of the member proposing to make the transfer and of his firm unless such firm will continue to be a member firm notwithstanding the completion of such transfer, shall mature and if not settled shall be closed out as in the case of an insolvency, unless the same are assumed or taken over by another member of this Exchange or member firm; provided, however, that, in the case of a member proposing to transfer only his foreign currency options participation, the provisions of this sentence shall apply only to the foreign currency option contracts of such member and of his firm (and shall not apply even to the latter contracts if such member's firm will continue to be a foreign currency options participant

firm notwithstanding the completion of such transfer).

Effect of Involuntary Transfers—No Change

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## 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 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

The proposed rule change would reduce the notice and posting period of a pending transfer of a membership or foreign currency options participation from 14 days to seven days.<sup>4</sup> The purpose of the posting period is to provide members with notice of the proposed transfer of the membership or participation. The posting sets forth the name of the applicant, or member, the affiliation with a particular member organization or participant organization, the character of the membership (regular membership or regular membership with options privileges), and the owner of the membership. The purpose of the posting period is to allow for submission of information concerning an applicant's qualification and fitness for membership. It should be noted that the Exchange's Office of the Secretary and Department of Membership Services has not received any submissions from members or others affiliated with member or participant organizations in response to postings over the past several years.

The Exchange is able to process transfers and applications for membership by utilizing modern communications facilities to have its agents conduct background investigation of potential new members, screen the records available from the Central Registration Depository and

inquire of other self-regulatory organizations on the status of a candidate for admission while allowing reasonable notice to the membership. The Exchange, once it has received all appropriate application materials, is able to process the applications well before the expiration of the current 14-day posting period. It should also be noted that the vast majority of postings are changes in membership status due to transfer and termination of membership under lease. The present 14-day posting and notice of transfer requires applicants to wait for a period of time following the completion of the processing of their application for their new membership capacity to become effective. With respect to intra firm transfers or transfers due to a new lease arrangement, this delay results in inefficiencies in the conduct of business and inconveniences applicants and their affiliated broker-dealer entities.

The proposed amendment to By-Law Article XII Section 12-4 also provides that the Chairperson or his designate may, in his discretion, reduce any membership and/or participation related notice and/or posting period requirements as deemed appropriate if the Chairman or his designate determines that the reduction is in the best interests of the Exchange. This proposed change is designed to afford the Exchange some flexibility in circumstances where it may be necessary to speed the approval process for an applicant to assume responsibilities as an options specialist for an Exchange member organization when that firm does not have an inactive nominee available to assume such responsibilities and the firm's only qualified person is a member in good standing of another self-regulating organization that has never been a member of the Phlx. In such circumstances a further reduction in the posting period could be called for and implemented without compromising the Exchange's duty to give notice and to protect the interest of the Exchange, members, member organizations, participants, participant organizations, investors, and the public interest.

The notice period also allows for submissions of claims against the transfer under Phlx By-Law Article XV by providing the membership and others with notice of changes in membership status. The Exchange believes that a seven-day notice period is sufficient to provide information to the membership of a pending change in membership or participation status or affiliation with a particular member or participant organization. It should be noted that potential claims against a

<sup>4</sup> This would also encompass inactive nominee notices. Telephone conversation between Murray L. Ross, Vice President and Secretary, Phlx, and Sonia Patton, Special Counsel, Division of Market Regulation, Commission, on September 4, 2001.

particular member or member organization may be asserted even after the posting period has run under By-Law Article XV, Section 15-4. However, it is extraordinarily rare that claims against a membership transfer are submitted to the Exchange, as such matters are usually settled by the parties prior to the effectiveness of a transfer.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>6</sup> in particular, because it is designed to perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and to protect investors and the public interest by providing a reduction of the posting period from 14 to seven days while retaining appropriate notice of applicants for membership and participation and transfers of memberships and preserving members' ability to submit information concerning the qualifications and fitness for membership of applicants.

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

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

The Exchange did not solicit or receive written comments 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 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 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 fix 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 the File No. SR-Phlx-2001-74 and should be submitted by October 17, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary,*

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## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Submit comments on or before November 26, 2001.

**ADDRESSES:** Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., Suite 8300, Washington DC 20416  
**FOR FURTHER INFORMATION CONTACT:** Sandra Johnston, Program Analyst, (202)

205-7528 or Curtis B. Rich, Management Analyst, (202) 205-7030.

### SUPPLEMENTARY INFORMATION:

*Title:* Settlement Sheet.

*Form No:* 1050.

*Description of Respondents:* SBA Borrowers.

*Annual Responses:* 39,988.

*Annual Burden:* 19,994.

*Title:* Lender Transcript of Account.

*Form No:* 1149.

*Description of Respondents:* SBA Guaranty Lenders.

*Annual Responses:* 5,000.

*Annual Burden:* 5,000.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

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## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with P.L. 104-13 effective October 1, 1995. The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer and at the following addresses: (OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, D.C. 20503. (SSA), Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1-A-21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410-965-4145, or

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

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

<sup>7</sup> 17 CFR 200.30-3(a)(12).