

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-24473 Filed 9-28-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44840; File No. SR-ISE-00-11]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by the International Securities Exchange LLC Relating to Membership Qualifications

September 24, 2001.

On November 28, 2000, the International Securities Exchange LLC ("ISE" 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 revise ISE Rule 302, "Qualification of Members." On July 2, 2001, the ISE filed Amendment No. 1 to the proposal.³ The proposal, as amended, would eliminate the requirement in current ISE Rule 302(b) that an ISE member be organized under the laws of one of the states of the United States or under other laws that the ISE's Board of Directors approves. In addition, the proposal would revise ISE Rule 302(b) to provide that an ISE member that does not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Commission and the ISE must: (1) Prepare all such reports, and maintain a general ledger chart of account and any description thereof, in English and U.S. dollars; (2) reimburse the ISE for any expense incurred in connection with examinations of the member to the

extent that such expenses exceed the cost of examining a member located within the continental United States; and (3) ensure the availability of an individual fluent in English and knowledgeable in securities and financial matters to assist representatives of the ISE during examinations.

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on July 24, 2001.⁴ No comments were received regarding the proposal, as amended. This order approved the proposed rule change, as amended.

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, the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder.⁶ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act⁷ because it is designed to facilitate the examination of foreign-based ISE members, thereby helping to ensure that foreign-based members comply with the ISE's rules and the federal securities laws.

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-ISE-00-11), as amended, 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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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44826; File No. SR-Phlx-2001-75]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Listing and Trading of Trust Issued Receipts

September 20, 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 August 17, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change, and amended such proposed rule change on September 10, 2001,³ as described in Items I and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal and Amendment No. 1 on an accelerated basis.

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

The Phlx, pursuant to Rule 19b-4 under the Act,⁴ proposes to amend Phlx Rule 803(j) to adopt generic listing standards to allow for the listing and trading of trust issued receipts ("TIRs") pursuant to Rule 19b-4(e) under the Act⁵ and to provide eligibility requirements for a component security that became part of a trust when the security was either: (a) Distributed by a company already included as a component security in the series of TIRs; or (b) received in exchange for the securities of a company previously included as a component security and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Phlx additionally proposes to amend Phlx Rule 803(j) to provide eligibility requirements for a component security that became part of a trust when the security was either: (a) Distributed by a company already included as a component security in the series of TIRs; or (b) received in exchange for the securities of a company previously included as a component security and that are no longer outstanding due to a merger, consolidation, corporate combination or other event. See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), SEC, dated September 7, 2001 ("Amendment No. 1").

⁴ 17 CFR 240.19b-4.

⁵ 17 CFR 240.19b-4(e).

⁴ See Securities Exchange Act Release No. 44567 (July 18, 2001), 66 FR 38445.

⁵ 15 U.S.C. 78f.

⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 eliminated a provision that would have amended ISE Rule 302 to state that an ISE member must be a member of at least one other national securities exchange registered under Section 6 of the Act, 15 U.S.C. 78f, or a national securities association registered under Section 15A of the Act, 15 U.S.C. 78o-3, that is designated responsibility for examining the ISE member for compliance with applicable financial responsibility rules pursuant to Rule 17d-1 under the Act, 17 CFR 240.17d-1. Amendment No. 1 notes that all ISE members currently are required to be members of another self-regulatory organization and that it would be necessary for the ISE to submit a rule change to the Commission before permitting any ISE member to be a member solely of the ISE.

that are no longer outstanding due to a merger, consolidation, corporate combination or other event. Below is the text of the proposed rule change. Proposed new language is in italics.⁶

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Rule 803. Criteria for Listing—Tier I

Rule 803(a)—(i) No Change.

(j) Trust Issued Receipts.

(1)–(11) No Change.

* * * * *

Commentary

.01 *The Exchange may approve a series of Trust Issued Receipts for listing and trading on the Exchange pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 (“Exchange Act”), provided each of the component securities satisfies the following criteria:*

Eligibility Criteria for Component Securities Represented by a series of Trust Issued Receipts:

(1) *each component security must be registered under Section 12 of the Exchange Act;*

(ii) *each component security must have a minimum public float of at least \$150 million;*

(iii) *each component security must be listed on a national securities exchange or traded through the facilities of Nasdaq and be a reported national market system security;*

(iv) *each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;*

(v) *each component security must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million; and*

(vi) *the most heavily weighted component security may not initially represent more than 20% of the overall value of the Trust Issued Receipt.*

.02 *The eligibility requirements for component securities that are represented by a series of Trust Issued Receipts and that became part of the Trust Issued Receipt when the security was either: (a) distributed by a company already included as a component security in the series of Trust Issued Receipts; or (b) received in exchange for the securities of a company previously included as a component security that is no longer outstanding due to a merger, consolidation, corporate*

combination or other event, shall be as follows:

(i) *the component security must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security;*

(ii) *the component security must be registered under section 12 of the Exchange Act; and;*

(iii) *the component security must have a Standard & Poor’s Sector Classification that is the same as the Standard & Poor’s Classification represented by component securities included in the Trust Issued Receipt at the time of the distribution or exchange.*

II. Self-Regulatory Organization’s Statement of the Purpose of, 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 III 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 purpose of the proposed rule is to amend Phlx Rule 803(j) to provide generic standards that permit listing and trading, or trading pursuant to unlisted trading privileges (“UTP”), of TIRs pursuant to Rule 19b–4(e) under the Act.⁷ This procedure would allow the Phlx to begin trading qualifying products without the need for notice and comment and Commission approval under Section 19(b) of the Act,⁸ thus promoting competition and benefiting the public interest, and, at the same time, reducing the Exchange’s regulatory burden.

The Phlx believes that its proposal supplements its existing rules⁹ with

⁷ Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to section 19(b) of the Act, the SRO’s trading rules, procedures, and listing standards for the product class that includes the new derivative securities product and the SRO has a surveillance program for the product class. 17 CFR 240.19b–4(e).

⁸ 15 U.S.C. 78s(b).

⁹ Existing Phlx rules provide that TIRs will be listed and traded, or traded pursuant to UTP, subject to application of the following criteria: (a)

generic listing criteria means, in part, to ensure that no security underlying a TIR will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various TIRs to meet investors’ needs. The Phlx further believes that the additional criteria are meant to ensure sufficient liquidity for investors seeking to purchase and deposit the underlying securities with the trustee to create a new TIR.

Thus, under the proposal, the Phlx could list or trade, pursuant to Rule 19b–4(e), any TIR product that meets the following additional criteria: (1) Each component security in the TIR must be registered under Section 12 of the Act;¹⁰ (2) each component security underlying the TIR must have a minimum public float of at least \$150 million; (3) each component security underlying the TIR must be listed on a national securities exchange or traded through the facilities of Nasdaq as a reported national market system security; (4) each component security underlying the TIR must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period; and (5) component security underlying the TIR must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million. In addition, no underlying security may initially represent more than 20% of the overall value of the TIR.

Furthermore, the Phlx will comply with the recordkeeping requirements of Rule 19b–4(e), and will file Form 19b–4(e) for each TIR listed, or admitted to trading pursuant to UTP, under the rule within five business days of commencement of trading.¹¹

Finally, the rules relating to the distribution of securities by issuers whose securities are included in a TIR have been recently revised to provide that: (1) If a company whose securities

Initial Listing—For each trust, the Exchange will establish a minimum number of TIRs required to be outstanding at the time of commencement of trading on the Exchange; (b) Continued Listing—Following the initial twelve month period after formation of a trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a trust upon which a series of TIRs is based under any of the following circumstances: (i) if the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of TIRs for 30 or more consecutive trading days; (ii) if the trust has fewer than 50,000 receipts issued and outstanding; (iii) if the market value of all TIRs issued and outstanding is less than \$1,000,000; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. See Phlx Rule 803(j).

¹⁰ 15 U.S.C. 781.

¹¹ 17 CFR 240.19b–4(e).

⁶ The Phlx made non-substantive changes by correcting the numbering of its Rule 803(j) and deleting a typographical error from its rule text. See telephone conversation on September 14, 2001 between John Dayton, Assistant Secretary and Counsel, Phlx, and Cyndi Nguyen, Attorney, Division, SEC.

are included in a series to TIRs distributes a security, the distributed security will remain in the trust as a component security if it is listed for trading on a national securities exchange or through the facilities of Nasdaq and its Standard & Poor's Sector Classification is the same as the Sector Classification represented by the other component securities in the trust at the time of the distribution; and (2) if the securities of a company that are included in a series of TIRs are no longer outstanding as a result of a merger, consolidation, corporate combination or other event, any securities received in exchange for those securities will remain in the trust as component securities if they are listed for trading on a national securities exchange or through the facilities of Nasdaq and their Standard & Poor's Sector Classification is the same as the Sector Classification represented by the other component securities in the trust at the time of the merger, consolidation, corporate combination or other event.

As a result of this change, a security that is automatically deposited into the trust as a result of a distribution or a corporate event may remain in the trust even though it does not meet all of the initial eligibility requirements set forth in Commentary 0.01 to Phlx Rule 803(j). For example, securities distributed by an issuer or exchanged in a merger generally do not have measurable price and trading histories, and may not have a minimum public float of \$150 million. There is a requirement to review the securities that are represented by TIRs on an ongoing basis to determine whether component securities continue to meet the initial eligibility requirements. Accordingly, the Exchange also proposes to amend Phlx Rule 803(j) to provide eligibility requirements for a component security that became part of a trust when the security was either: (1) Distributed by a company already included as a component security in the series of TIRs; or (2) received in exchange for the securities of a company previously included as a component security and that are no longer outstanding due to a merger, consolidation, corporate combination of other event. The eligibility requirements for such component securities are as follows:

- Such component security must be listed on national securities exchange or traded through the facilities of Nasdaq and a reported national market system security;
- Such component security must be registered under Section 12 of the Exchange Act; and

- Such component security must have a Standard & Poor's Sector Classification that is the same as the Standard & Poor's Sector Classification represented by component securities already included in the TIR at the time of the distribution or exchange.¹²

The Exchange believes that it is appropriate in these limited situations to provide alternate eligibility criteria for component securities. To reduce the number of distributions of securities from the TIR which cause inconvenience and increased transaction and administrative costs for investors, it is useful to allow certain securities that are received as part of a distribution from a company or as the result of a merger, consolidation, corporate combination or other event to remain in the TIR. The proposed eligibility requirements ensure that component securities included in a TIR as a result of a distribution or exchange event are widely held (having been distributed to all of the shareholders holding the original component security), traded through the facilities of an exchange of Nasdaq and registered under Section 12 of the Act.¹³

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(5)¹⁵ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by allowing the Exchange to list and trade, or trade pursuant to UTP, TIRs which meet the criteria in the proposed rule, thus creating another marketplace for such products which should promote additional competition in such products. Furthermore, the Exchange believes Amendment No. 1 should enhance competition by enabling the Phlx to better compete with other markets trading TIRs.

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

The Phlx does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹² See Amendment No. 1, *supra*, note 3.

¹³ 15 U.S.C. 781.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

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 with respect to the proposed rule change.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as amended, 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 number SR-Phlx-2001-75 and should be submitted by October 22, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, 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 section 6(b)(5) of the Act.¹⁶ Specifically, the Commission finds that the proposal to provide generic standards to permit listing and trading of TIRs pursuant to Rule 19b-4(e) will further the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under section 19(b) of the Act. By establishing generic standards, the proposal should reduce the Phlx's regulatory burden, as well as benefit the public interest, by enabling the Phlx to bring qualifying products to the market more quickly. Accordingly, the Commission finds that the Phlx's proposal and Amendment No. 1 will prevent fraudulent and manipulative

¹⁶ 15 U.S.C. 78f(b)(5).

acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.¹⁷

Rule 19b-4(e) of the Act provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that includes the new derivative securities product and the SRO has a surveillance program for the product class.¹⁸

As described above, the Commission has previously approved Phlx rules that permit the listing and trading of individual TIRs on the Exchange or pursuant to UTP.¹⁹ In approving these securities for trading, the Commission considered their structure, their usefulness to investors and the markets, and the Exchange's rules and surveillance programs that govern their trading. The Commission concluded then that securities approved for listing under those rules would allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transaction costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the TIR. The Commission believes, for the reasons set forth below, that additional TIRs that satisfy the proposed generic standards and, therefore, can be listed under Rule 19b-4(e) without prior Commission approval, should produce

the same benefits to the Phlx and to investors.

The Commission further believes that adopting generic listing standards for these securities and applying Rule 19b-4(e) should fulfill the intended objective of that rule by allowing those TIR products that satisfy the generic standards to start trading, without the need for notice and comment and Commission approval. The Phlx's ability to rely on Rule 19b-4(e) potentially reduces the time frame for bringing these securities to the market or for permitting the trading of these securities pursuant to UTP, and thus enhances investors' opportunities. The Commission notes that while the proposal reduces the Exchange's regulatory burden, the Commission maintains regulatory oversight over any products listed under the generic standard through regular inspection oversight.

The Commission finds that the Phlx's proposal contains adequate rules and procedures to govern the listing and trading of TIRs pursuant to Rule 19b-4(e) on the Phlx, or pursuant to UTP. As the Commission noted in its previous review and approval of Phlx Rule 803(j), all TIR products listed under the generic standards will be subject to the full panoply of the Phlx rules and procedures that now govern both the trading of TIRs and the trading of equity securities on the Phlx, including, among others, rules and procedures governing the priority, parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit order.²⁰

The Commission further finds that: (1) By requiring that the underlying securities in a TIR are registered under section 12 of the Act and listed on a national securities exchange or Nasdaq and (2) by establishing minimum values for the number of outstanding receipts, average daily trading volume, average daily dollar volume, and public float, the Exchange's proposed listing criteria will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets for those TIR products listed and traded pursuant to Rule 19b-4(e). The Commission believes that the listing criteria will help to ensure that no security underlying a TIR will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various TIRs to meet investor's needs. The Commission further believes that these criteria should serve to ensure that the

underlying securities of such TIR are well capitalized and actively traded, which will help to ensure that U.S. securities markets are not adversely affected by the listing and trading of new TIRs under Rule 19b-4(e). Accordingly, the Commission finds that this criteria is consistent with section 6(b)(5) of the Act, because they serve to prevent fraudulent or manipulative acts, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.²¹

Additionally, as the Commission noted in its previous review and approval of Phlx Rule 803(j), the Exchange's delisting criteria allows it to consider the suspension of trading and the delisting of a TIR if an event occurs that makes further dealings in such securities inadvisable. This will give the Phlx flexibility to delist TIRs if circumstances warrant. The proposal also relies on procedures to halt trading in TIRs in certain enumerated circumstances that were approved previously by the Commission.²²

The Commission notes that, in connection with its previous review and approval of Phlx Rule 803(j), it approved the Exchange's minimum price increments, its surveillance procedures, and its disclosure and prospectus delivery requirements for TIRs.²³ In accord with these previous findings, the Commission believes that these rules, which will govern the trading of TIR products listed pursuant to Rule 19b-4(e), will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest. Further, the Commission believes that the proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risk of trading TIRs.

Furthermore, the Phlx will file Form 19b-4(e) with the Commission within five business days of commencement of trading a TIR under the generic standards, and will comply with all Rule 19b-4(e) recordkeeping requirements.

The Commission believes that the Phlx's proposed rule governing the listing and trading of TIRs pursuant to Rule 19b-4(e) provides adequate safeguards to prevent manipulative acts and practices and to protect investors

¹⁷ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7-13-98).

¹⁹ See Securities Exchange Act Release No. 43773 (December 27, 2000), 66 FR 838 (January 4, 2001) (SR-Phlx-00-31).

¹ Id.

²¹ 15 U.S.C. 78f(b)(5).

²² See supra note 19.

²³ Id.

and the public interest, consistent with section 6(b)(5) of the Act.²⁴

Finally, the Commission believes that the Amendment No. 1 to provide an alternate eligibility criteria for component securities received as part of a distribution or as a result of a merger, consolidation, corporate combination or other event to remain in the trust should enhance competition by enabling the Phlx to better compete with other markets trading TIRs and notes that the Commission has previously approved similar listing standards modifications for the American Stock Exchange, Inc.²⁵

Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,²⁶ to approve the proposal, as amended, on an accelerated basis prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.²⁷

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change, as amended, (SR-Phlx-2001-75), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44844; File No. SR-Phlx-2001-68]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Regarding Notification of Changes in Business Operations and the Minor Rule Violation Enforcement and Reporting Plan

September 25, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder,

notice is hereby given that on July 19, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 20, 2001, the Phlx amended the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to adopt an Equity Floor Procedure Advice ("EFPA") and an Options Floor Procedure Advice ("OFPA"), with fine schedules under the minor rule violation enforcement and reporting plan ("Minor Rule Plan")⁴ containing the requirements for notification established in Phlx Rule 610, "Notification of Changes in Business Operations." Additionally, the Exchange proposes to amend Phlx Rule 610 to require at least ten business days prior notification of a change in business operations. The same ten business day notification requirement is proposed for the OFPA and EFPA and, therefore, establishes consistency with the proposed OFPA, EFPA and Phlx Rule 610. The text of the proposed rule change is below. Additions are in italics.

F-33 Failure to Provide Notification of Changes in Business Operations

Any member or member organization for which the Exchange is the Designated Examining Authority ("DEA"), that operates as a specialist, floor broker and/or Registered Options Trader ("ROT"), shall provide prior written notification to the Examinations Department of any change in the business operations of such member or member organization which would cause the member or member organization to be subject to additional or modified net capital requirements, examination schedules or other

³ See September 19, 2001 letter from Linda S. Christie, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaces and supersedes the original proposal.

⁴ SEC Rule 19d-1(c)(1) requires prompt reporting to the Commission of any final disciplinary action. 17 CFR 240.19d-1(c)(1). However, minor rule violations not exceeding \$2,500.00 are not deemed final and therefore are not subject to the same reporting requirements. See also Phlx Rule 970.

registration, examination or regulatory requirements.

For the purposes of this Advice, the appropriate time frame for notification is at least 10 business days prior to the change in business operations.

FINE SCHEDULE (Implemented on a three-year running calendar basis)

F-33

1st Occurrence \$250.00

2nd Occurrence \$500.00

3rd Occurrence \$1000.00

4th and Thereafter Sanction is

discretionary with Business Conduct Committee

* * * * *

Notification of Changes in Business Operations

Rule 610. Any member or member organization for which the Exchange is the Designated Examining Authority ("DEA"), that operates as a specialist, floor broker and/or Registered Options Trader ("ROT"), shall provide prior written notification to the Examinations Department of any change in the business operations of such member or member organization which would cause the member or member organization to be subject to additional or modified net capital requirements, examination schedules or other registration, examination or regulatory requirements.

For the purposes of this Rule, the appropriate time frame for notification is at least 10 business days prior to the change in business operations.

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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 Phlx proposes to provide for the issuance of fines for failure to notify the Exchange of certain changes in business operations for minor infractions without the need for formal disciplinary action.

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ See Securities Exchange Act Release No. 44309 (May 16, 2001), 66 FR 28587 (May 23, 2001) (SR-Amex-2001-04).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.