

6(b) of the Act<sup>4</sup> in general, and furthers the objectives of section 6(b)(5)<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

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

The Exchange believes that the proposed rule change will impose no burden on competition that is not 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*

No written comments were solicited or received with respect to the proposed rule change.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, 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 CHX. All submissions should refer to the File No. SR-CHX-2001-29 and should be submitted by January 31, 2002.

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

After careful review, 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(b)(5) of the Act.<sup>6</sup> Specifically, the Commission finds that the proposal 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 will promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers issuers, brokers, or dealers.<sup>7</sup>

The CHX has requested that the proposed rule change be given accelerated approval pursuant to section 19(b)(2) of the Act.<sup>8</sup>

The Commission finds good cause for approving the proposed rule change 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).<sup>9</sup> As noted above, the Commission has previously approved proposed rule changes by other exchanges that provided similar eligibility requirement.<sup>10</sup> The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the previous filings. Accordingly, the Commission finds that it is consistent with section 6(b)(5) of the Act<sup>11</sup> to approve the proposal on an accelerated basis.

### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-CHX-2001-29) is hereby approved on an accelerated basis.

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

<sup>7</sup> 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)

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> See *supra* note 3.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 45192; File No. SR-Phlx-2001-106]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending the Pilot Program for Exchange Rule 98, Emergency Committee Until May 30, 2002

December 26, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 23, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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 Exchange is proposing to extend the pilot program period for Rule 98, Emergency Committee until May 30, 2002. No changes to the existing rule language are being proposed.

#### 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 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.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6). The Exchange filed the pre-filing notice required by Rule 19b-4(f)(6) by filing a written description of the proposed rule change and the text of the proposed rule change on November 16, 2001.

<sup>4</sup> 15 U.S.C. 78f(b).

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

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On December 23, 1999, the Commission approved amendments to Rule 98, Emergency Committee (the "Committee"), which updated the composition of the Committee to reflect the current governance structure of the Exchange, on a 120-day pilot basis.<sup>5</sup> The pilot has been extended five times, most recently to November 30, 2001.<sup>6</sup> The pilot program is being extended again to May 30, 2002 as the Exchange and the Commission consider other changes to the composition of the Committee.

The Exchange originally proposed to amend Rule 98, Emergency Committee, by updating the composition of the Committee to correspond with previous revisions to the Exchange's governance structure,<sup>7</sup> and by deleting a provision authorizing the Committee to take action regarding CENTRAMART, an equity order reporting system which is no longer used on the Exchange Equity Floor.

The Committee was formed in 1989<sup>8</sup> prior to the aforementioned changes to the Exchange's governance structure.

<sup>5</sup> Securities Exchange Act Release No. 42272 (December 23, 1999), 65 FR 153 (January 3, 2000) (SR-Phlx-99-42). In the approval order, the Commission requested that the Exchange examine the operation of the Committee to ensure that the Committee is not dominated by any one Exchange interest (e.g., On-Floor or Off-Floor interest). The Commission requested that the Exchange report back to the Commission on its views as to whether the Committee structure ensures that all Exchange interests are fairly represented by the Committee.

<sup>6</sup> Securities Exchange Act Release No. 42898 (June 5, 2000), 65 FR 36879 (June 12, 2000) (SR-Phlx-00-41), extending the pilot program until August 21, 2000; Securities Exchange Act Release No. 43169 (August 17, 2000), 65 FR 51888 (August 25, 2000) (SR-Phlx-00-76), extending the pilot program until November 17, 2000. On July 14, 2000, the Exchange filed a proposed rule change to effect the amendments on a permanent basis. SR-Phlx-00-63 (filed July 14, 2000). In SR-Phlx-00-63 the Exchange also enclosed the Exchange's views as to whether the Committee structure ensures that all Exchange interests are fairly represented by the Committee. Because the Exchange was considering further changes to the Committee, SR-Phlx-00-63 was withdrawn on June 15, 2001. The pilot program was extended again until April 30, 2001, Securities Exchange Act Release No. 43614 (November 22, 2000), 65 FR 75332 (December 1, 2000) (SR-Phlx-00-101); and again until July 31, 2001, Securities Exchange Act Release No. 44245 (May 1, 2001), 66 FR 23961 (May 10, 2001) (SR-Phlx-2001-44). The last extension of the pilot program was until November 30, 2001, Securities Exchange Act Release No. 44653 (August 3, 2001), 66 FR 43289 (August 17, 2001) (SR-Phlx-2001-70).

<sup>7</sup> See Securities Exchange Act Release No. 38960 (August 22, 1997), 62 FR 45904 (August 29, 1997) (SR-Phlx-97-31).

<sup>8</sup> See Securities Exchange Act Release No. 26858 (May 22, 1989), 54 FR 23007 (May 30, 1989) (SR-Phlx-88-36).

The original proposed rule change, approved by the Commission, deleted the word "President" from the rule, as the Exchange no longer has a "President," and included the Exchange's On-Floor Vice Chairman<sup>9</sup> as a member of the Committee.

Thus, Rule 98 specifies the composition of the Emergency Committee to include the following individuals: The Chairman of the Board of Governors; the On-Floor Vice Chairman of the Board of Governors; and the Chairmen of the Options Committee, the Floor Procedure Committee, and the Foreign Currency Options Committee.

Extension of the pilot program through May 30, 2002 permits the Committee to reflect the current governance structure of the Exchange and ensures that the Committee will be in place to take necessary and appropriate action to respond to extraordinary market conditions or other emergencies.<sup>10</sup> The extension of the pilot program will also allow the Exchange and the Commission the necessary time to propose changes to the Committee's structure to meet the Commission's concerns about whether the Committee ensures that all interests of the Exchange (e.g., On-Floor and Off-Floor) are adequately represented by the Committee, particularly in light of the events of September 11, 2001.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6<sup>11</sup> of the Act in general, and with Section 6(b)(5)<sup>12</sup> of the Act in specific, in that it is designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, by updating the composition of the Emergency Committee to reflect the current governance structure of the Exchange, and by continuing to provide a regular procedure for the Exchange to take necessary and appropriate action to respond to extraordinary market conditions or other emergencies.<sup>13</sup>

<sup>9</sup> See also Exchange By-Law, Article IV, Section 4-2.

<sup>10</sup> Previously, the Exchange has described "extraordinary market or emergency conditions" as, among other things, a declaration of war, a presidential assassination, an electrical blackout, or events such as the 1987 market break or other highly volatile trading conditions that require intervention for the market's continued efficient operation. Letter dated March 15, 1989, from William W. Uchimoto, General Counsel, Exchange, to Sharon L. Itkin, Esquire, Commission, Division of Market Regulation.

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> For purposes only of accelerating the operative date of this proposal, the Commission has

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not 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 Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder because the proposed rule change does not (i) significantly affect the protection of investors or their public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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.

The Commission finds that it is appropriate to accelerate the operative date of the proposed rule change and to permit the proposed rule change to become immediately operative because the proposal simply extends a previously approved pilot program until May 30, 2002. No changes to Rule 98 are being proposed at this time and the Commission has not received any comments on the pilot program. In addition, the Exchange appropriately filed a pre-filing notice as required by Rule 19b-4(f)(6).<sup>16</sup>

**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.

considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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 the File No. SR-Phlx-2001-106 and should be submitted by January 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-595 Filed 1-9-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45233; File No. SR-Phlx-2001-116]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Its Schedule of Dues, Fees and Charges To Increase the Equity Floor Brokerage Assessment

January 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 20, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as 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 amend its schedule of dues, fees and charges to increase the equity floor brokerage assessment from 1.25% of net floor brokerage income to 5%. The increased equity floor brokerage assessment fee will be implemented on transactions settling on or after January 2, 2002. Previously, the Exchange charged a 5% equity floor brokerage assessment fee but offered equity specialist units that also conducted floor brokerage business on the Exchange a discounted rate on the assessment at 1.25%. That discounted rate was subsequently extended to all equity floor brokerage.<sup>3</sup>

#### 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 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 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 the Statutory Basis for, the Proposed Rule Change

###### (1) Purpose

Currently, the Exchange assesses a monthly fee on the amount of money a floor broker bills to its customers each month for floor brokerage services with respect to equity securities. The current rate is 1.25% of net floor brokerage income and has been in effect for over four years. Given the costs of operating the Exchange's equities trading floor, the Exchange believes that it is now necessary to increase the equity floor brokerage assessment fee to 5%. The Exchange notes that prior to reducing the equity floor brokerage assessment fee to 1.25% in November 1997,<sup>4</sup> the rate was 5% for floor brokerage units only and specialist units that conducted a floor brokerage business were charged a discounted rate of 1.25%. Furthermore, the Exchange notes that the increased rate of 5% is the same rate

that is currently charged on equity and index options floor brokerage.

###### (2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)<sup>5</sup> of the Act in general and, in particular, with section 6(b)(4)<sup>6</sup> of the Act, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

##### 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 Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee or other charge imposed by the Exchange, has become effective pursuant to section 19(b)(3)(A)<sup>7</sup> of the Act and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>8</sup> At any time within 60 days of the filing of such 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 the 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 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

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

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

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

<sup>3</sup> See Securities Exchange Act Release No. 39325 (November 13, 1997), 62 FR 62395 (November 21, 1997).

<sup>4</sup> *Id.*

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).