

further the objectives of Section 6(b)(5) of the Act<sup>9</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 to protect investors and the public interest, by providing a System that enables Floor Brokers to handle orders they represent more efficiently, while enabling the Exchange to comply with the requirement in the Order to provide an electronic audit trail for non-electronic orders entered on the Exchange.

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

The Exchange 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. 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-Phlx-2004-10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Exchange. All submissions should be submitted by March 2, 2004.

### IV. Discussion

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.<sup>10</sup> In particular the Commission finds that the proposed rule is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities System, and protect investors and the public interest.<sup>11</sup>

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposed rule change on a pilot basis will allow the Exchange to have enforceable rules governing use of the Exchange's new System in effect prior to permanent approval of the rules, and will help ensure that members are properly trained and familiar with the rules. In addition, that Commission is granting accelerated approval in order to prevent a lapse in the effectiveness of the Exchange's rules governing operation of the System to ensure continuity of the pilot.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-Phlx-2004-10) is approved on an accelerated basis on a pilot basis until August 2, 2004.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-2812 Filed 2-9-04; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>10</sup> In approving this proposed rule change, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49181; File No. SR-Phlx-2004-06]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Member Organizations' Security Requirements

February 3, 2004.

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 January 23, 2004, 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 the Exchange has prepared. 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 Phlx Rules 909 and 972. The amendment to Phlx Rule 909 would create an additional method for member organizations to provide security to the Exchange for the payment of any claims owed to the Exchange, Stock Clearing Corporation of Philadelphia ("SCCP"), and other Exchange members or member organizations (the "Security Requirement"). The amendments to Phlx Rule 972 would extend the time available to member organizations to meet the Security Requirement following the transition of the Exchange from a non-stock to a stock corporation (the "Demutualization").<sup>3</sup> The amendments to Phlx Rule 972 would also correct two cross-references contained in that rule.

The text of the proposed rule change is below. Proposed new language is *italicized*; deletions are in brackets.

\* \* \* \* \*

#### Rule 909. Security for Exchange Fees and Other Claims

(a) Each member organization, and all applicants for registration as such shall, except as provided below, be required to provide (and maintain) security to the Exchange for the payment of any claims

<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. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

owed to the Exchange, Stock Clearing Corporation of Philadelphia ("SCCP"), and to Exchange members and/or other member organizations. If the member organization maintains excess net capital of at least the amount established by the Exchange and published by the Exchange from time to time (the "Excess Net Capital Test"), then no guaranty or deposit shall be required; provided that, if at the end of any calendar month a member organization has less than such amount of excess net capital, then it shall within 30 calendar days of the end of such month deliver to the Exchange security as provided in Rule 909(a)(i) or (ii); provided, further, that any member organization relying upon the Excess Net Capital Test shall deliver to the Membership Services Department of the Exchange each quarter a FOCUS report, and shall promptly advise the Membership Services Department if such member organization's excess net capital at any time falls below such minimum established by the Exchange. If the member organization does not satisfy the Excess Net Capital Test, then the member organization shall provide security to the Exchange in one of the following forms:

(i) An acceptable guaranty by a clearing member organization acceptable to the Exchange guaranteeing the payment by such member organization of any claims, or if acceptable to the Exchange, a security agreement among the Exchange, SCCP and the member organization, in form and substance satisfactory to the Exchange, duly executed and delivered by the member organization, whereby the member organization shall create in favor of the Exchange, to secure payment of any claims owed by the member organization to the Exchange, SCCP, and to Exchange members and/or other member organizations, a valid first priority perfected lien on and continuing security interest in so much of the funds and other property of the member organization (including without limitation all securities, security entitlements, financial assets, investment property and other property and assets) held from time to time in the margin account of the member organization maintained with SCCP as shall then exceed the required margin amount (as such term is used in the Margin Account Agreement then in effect between SCCP and the member organization); or

(ii) A deposit with the Exchange in an amount not to exceed \$50,000, as established by the Exchange with prior notice, to be held, together with all other such deposits made pursuant to

this rule, in a segregated account, the proceeds of which may be applied by the Exchange in the same manner as proceeds from transfers of participations under Section 15-3 of the By-Laws (as if references in such Section 15-3 to "foreign currency options participant" were to "member organization"). Such deposit may be invested by the Exchange in United States government obligations or any other investments which provide safety and liquidity of the principal invested, interest or income on which deposit shall be paid periodically by the Exchange to such member organization.

(b) No change.

\* \* \* \* \*

#### **Rule 972. Continuation of Status After the Merger**

Each member (including, without limitation, each holder of an equity trading permit), inactive nominee and member organization holding such status immediately prior to the effective time of the Merger and that, at such time, is not subject to any suspension of such status shall, from and after the Merger, maintain such status as a member, inactive nominee or member organization and in the case of members, shall be permit holders and issued a permit, provided that such member, inactive nominee and member organization shall provide to the Admissions Committee and the Exchange: (x) not later than 15 days following the Merger, [The security required by Rule 909 (unless the member organization has obtained an exemption under Rule 909(c));] the form to be filed by the member organization's qualifying permit holder pursuant to Rule 921(a)[;] and the designation of the member organization's Member Organization Representative pursuant to Rule 921(b) in the form prescribed by the Exchange; and (y) not later than 45 days following the Merger, the security required by Rule 909 (unless the member organization has obtained an exemption under Rule 909).

The consequences of a failure to furnish within such period:

(a) The security required by Rule 909 (unless the member organization has obtained an exemption under Rule 909(c)) and/or the form to be filed by the member organization's qualifying permit holder pursuant to Rule 921(a) shall be the immediate suspension of the member organization's status as such; and

(b) The designation of the member organization's Member Organization Representative pursuant to Rule 921(b) shall be as provided in Rule 921(c) (as

if the [30 day] period specified therein shall have elapsed).

Any member or member organization of the Exchange prior to the Merger that, as of the effective date of the Merger, has been suspended shall not be issued a permit or shall not be deemed a member organization, as the case may be, automatically upon the Merger. If the member or member organization shall cure any delinquency within 30 days of the Merger, then the foregoing provisions of this Rule 972 shall apply (but as if the dates specified therein run from the date of the cure of any delinquency, rather than the date of the Merger); otherwise, such prior members and member organizations must reapply for a permit, or registration as a member organization, as the case may be, as if they were new applicants for admission or registration.

For the avoidance of doubt, foreign currency options participants and participant organizations, as well as approved lessors of foreign currency options participations holding such status prior to the Merger will continue to hold such status following the Merger.

\* \* \* \* \*

#### **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 had 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.

##### *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 change is to facilitate the administration of new Phlx Rules 909 and 972, which were recently adopted as part of the Exchange's Demutualization. The Exchange believes that the minor changes proposed in this filing make it easier for the Exchange to administer the new rules because they allow more time to comply, in the case of Phlx Rule 972, and because they add an additional method of compliance in the case of Phlx Rule 909. The purpose of the proposed amendment to Phlx Rule 909

is to provide Phlx member organizations with an additional method by which they may satisfy the Security Requirement, which was omitted from the original draft. Phlx Rule 909 provides that the Security Requirement may be satisfied by a member organization in one of three ways: (1) By maintaining excess net capital in an amount specified by the Exchange; (2) by providing an acceptable guaranty by a clearing member organization guaranteeing the payment of any claims against the member organization; or (3) by maintaining a deposit with the Exchange in an amount not to exceed \$50,000.

The current proposal would add a fourth method by which a member organization may satisfy the Security Requirement. Specifically, the proposed amendment to Phlx Rule 909 would allow a member organization to satisfy the Security Requirement by entering into an acceptable agreement among the Exchange, SCCP<sup>4</sup> and the member organization (a "Security Agreement"), which would establish and assign to the Exchange a first priority perfected lien on and continuing security interest in the excess margin funds held in such member organization's SCCP margin account.<sup>5</sup> Should a member organization elect to provide security to the Exchange in the form of a Security Agreement, any outstanding claims by the Exchange, SCCP or other Exchange members or member organizations would be satisfied against the excess margin funds in the Phlx member organization's SCCP margin account. The Exchange had intended to capture this form of security when drafting the provision in Phlx Rule 909 covering an acceptable guaranty by a clearing member organization, but omitted to capture SCCP specifically.<sup>6</sup> Accordingly, this new method of meeting the Security Requirement is a variation of an existing method, particularly because many member organizations doing business on the equity floor do not have a relationship with a "clearing member organization;" their "clearing" relationship is instead with SCCP.

The purpose of the proposed amendments to Phlx Rule 972 is to extend the time member organizations have to satisfy the Security Requirement following the closing of

Demutualization and to correct two cross-references contained in Phlx Rule 972. Phlx Rule 972 requires member organizations to satisfy the Security Requirement within 15 days following the closing of Demutualization in order for member organizations to avoid suspension. The Exchange is proposing to extend the 15-day time period to 45 days. The Exchange believes that the extension of time will provide member organizations with sufficient time to process and complete the tasks necessary to meet the Security Requirement and avoid suspension.

Finally, Phlx Rule 972 contains two cross-references that are incorrect. First, Phlx Rule 909(c) is referred to in Phlx Rule 972(a). The cross-reference should simply be to Phlx Rule 909. Second, Phlx Rule 972(b) refers to a 30-day period from Phlx Rule 921(c). That 30-day reference is incorrect (it is a 60-day period in Phlx Rule 921(c)). The reference should simply refer to the "period" in Phlx Rule 921(c).

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>8</sup> in particular, in that it promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market, and in general, protects investors and the public interest by offering member organizations another method to satisfy the Security Requirement, by allowing member organizations more time to comply with the Security Requirement and by correcting cross-references in Phlx Rule 972.

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

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

### *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 written comments with respect to the proposed rule change.

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

The foregoing rule change has become immediately effective pursuant to

section 19(b)(3)(A)(iii)<sup>9</sup> of the Act and Rule 19b-4(f)(6)<sup>10</sup> under the Act because it effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the thirty day pre-operative waiting period and the five business day pre-filing period, in order to facilitate member organization compliance with new Phlx Rule 909.

The Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date of the proposal and waive the pre-filing requirement.<sup>11</sup> The Commission believes that such acceleration and waiver would provide member organizations with a somewhat greater period of time to satisfy the Security Requirement and help facilitate compliance with new Phlx Rule 909. For this reason, the Commission designates that the proposal become operative immediately and that the five business day pre-filing period be waived. At any time within sixty days after the filing of the proposed rule change, the Commission may summarily abrogate this 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 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-Phlx-2004-06. This file number should be included on the subject line

<sup>4</sup> SCCP, a subsidiary of Phlx, is a registered clearing agency.

<sup>5</sup> See SCCP, Phlx Rule 9.

<sup>6</sup> Although SCCP is a corporate member, under Phlx By-Law Article XII, Sections 12-2 and 12-4, it is neither a member organization nor even a broker-dealer, and thus technically does not comply with the existing language of Phlx Rule 909(a)(i).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. Section 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> For purposes of accelerating the operative date of the proposed rule and waiving the five-day pre-filing period, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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-2004-06 and should be submitted by March 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-2813 Filed 2-9-04; 8:45 am]

**BILLING CODE 8010-01-P**

## DEPARTMENT OF STATE

[Public Notice 4620]

### 30-Day Notice of Proposed Information Collection: Forms DS-2053, DS-3024, DS-3025 and DS-3026; Medical Examination for Immigrant or Refugee Applicant; OMB Control Number 1405-0113

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

*Type of Request:* Extension of currently approved collection.

*Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).

*Title of Information Collection:* Medical Examination for Immigrant or Refugee Applicant.

*Frequency:* On occasion. Once per respondent.

*Form Number:* DS-2053, DS-3024, DS-3025 and DS-3026.

*Respondents:* Immigrant visa and refugee applicants.

*Estimated Number of Respondents:* 630,000 per year.

*Average Hours Per Response:* 1 hour.

*Total Estimated Burden:* 630,000 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

#### FOR FURTHER INFORMATION CONTACT:

Copies of the proposed information collection and supporting documents may be obtained from Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW, RM L-703, Washington, DC 20520, who may be reached on (202) 663-1166. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on (202) 395-7860.

Dated: January 30, 2004.

**Janice L. Jacobs,**

*Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.*

[FR Doc. 04-2829 Filed 2-9-04; 8:45 am]

**BILLING CODE 4710-06-P**

## DEPARTMENT OF STATE

[Public Notice 4618]

### Culturally Significant Objects Imported for Exhibition Determinations: "Nicholas and Alexandra: At Home With the Last Tsar and His Family"

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March

27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Nicholas and Alexandra: At Home with the Last Tsar and his Family," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Santa Fe, New Mexico, from on or about May 28, 2004 until on or about September 6, 2004, at the Newark Museum, Newark, New Jersey, from on or about September 27, 2004 until on or about January 9, 2005, at the Cincinnati Museum Center, Cincinnati, Ohio, from on or about January 29, 2005 until on or about May 1, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, telephone: (202) 619-6982. The address is U.S. Department of State, SA-44, 301 4th Street SW., Room 700, Washington, DC 20547-0001.

Dated: February 3, 2004.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 04-2823 Filed 2-9-04; 8:45 am]

**BILLING CODE 4710-08-P**

## DEPARTMENT OF STATE

[Public Notice 4589]

### Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on February 24 and 25 at the Bechtel Corporation in San Francisco, California. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c) (1) and (4), it has

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