

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 Nasdaq. All submissions should refer to File No. SR-NASD-2003-44 and should be submitted by March 3, 2004.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>37</sup> that the proposed rule change (SR-NASD-2003-44) and Amendment Nos. 1 and 2 are approved, and that Amendment No. 3 is approved on an accelerated basis.

\* \* \* \* \*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>38</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49193; File No. SR-Phlx-2004-12]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Member Organizations' Compliance With Phlx Rule 972

February 4, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on February 3, 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 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 Exchange proposes to amend Phlx Rule 972, Continuation of Status After the Merger, to extend the filing period of a member organizations' qualifying permit holder pursuant to Phlx Rule 921(a), following the transition of the Exchange from a non-stock to a stock corporation (the "Demutualization").<sup>3</sup> Specifically, the Exchange proposes to extend the time period from 15 days to 45 days after the closing of the Demutualization. The text of the proposed rule change is available at the Exchange and at the Commission.

### 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.

#### 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 Rule 972, which was recently adopted as part of the Exchange's Demutualization. The Exchange believes that the minor change proposed in this filing would make it easier for the Exchange to administer the new rule, because it allows more time for member organizations to comply.

Phlx Rule 972 currently establishes three deadlines for member organizations; two of the deadlines are within 15 days after the closing of Demutualization<sup>4</sup> and one is within 45 days after the closing of Demutualization. First, the requirement that member organizations specify the Member Organization Representative within 15 days is not being changed. Second, Rule 972 requires that member

organizations provide the security required by Rule 909 within 45 days. Rule 909 requires member organizations provide security to the Exchange for the payment of any claims owed to the Exchange, the Stock Clearing Corporation of Philadelphia ("SCCP"),<sup>5</sup> and other Exchange members or member organizations (the "Security Requirement").<sup>6</sup> Third, Rule 972 requires member organizations to comply with Rule 921(a) within 15 days. Rule 921 requires that the member who proposes to qualify an entity as a member organization file a form with the Exchange.

The purpose of the proposed amendment to Rule 972 is to extend the time member organizations have to satisfy the requirements of 921(a) in order for member organizations to avoid suspension.<sup>7</sup> The Exchange is proposing to extend the 15-day time period to 45 days. The Exchange believes that this extension will provide member organizations with sufficient time to process and complete the tasks necessary to meet the requirements and avoid suspension.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</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 allowing member organizations more time to comply with Rule 972, and thus, continue their status as a member organization without disruption.

#### 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.

<sup>5</sup> SCCP, a subsidiary of Phlx, is a registered clearing agency.

<sup>6</sup> The Exchange recently, in SR-Phlx-2004-06, extended the compliance date for the Security Requirement from 15 days to 45 days after the closing of Demutualization and provided an additional method of complying with the Security Requirement, which is by entering into an acceptable agreement among the Exchange, SCCP and the member organization (a "Security Agreement"). The Security Agreement establishes and assigns 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>7</sup> See Rule 972(a).

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

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

<sup>37</sup> *Id.*

<sup>38</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. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73).

<sup>4</sup> The closing of the Demutualization, also referred to as the Merger, occurred on January 20, 2004.

*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 has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder,<sup>11</sup> because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b-4(f)(6)(iii) of the Act,<sup>12</sup> the proposed rule change does not become operative for 30 days after the date of 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 accelerate the thirty-day operative date of the proposal and also waive the requirement that the Exchange submit written notice of its intent to file the proposed rule change at least five business days prior to the filing date, in order to facilitate member organization compliance with new Phlx Rule 972 and to avoid disruption of their status as member organizations. The Commission, consistent with the protection of investors and the public interest, has determined to accelerate the 30-day operative date to February 3, 2004,<sup>13</sup> the date of filing of the proposed rule change. Such waiver would facilitate member organization compliance with new Phlx Rule 972 and thus would avoid disruption of their

status as member organizations. In addition, the Commission has determined to waive the five-day pre-filing requirement.

**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-2004-12. This file number should be included on the subject line 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 No. SR-Phlx-2004-12 and should be submitted by March 3, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49190; File No. SR-SCCP-2003-07]

**Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Equity Charges for Specialists**

February 4, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 30, 2003, the Stock Clearing Corporation of Philadelphia ("SCCP") 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 primarily by SCCP. 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**

SCCP proposes to amend its schedule of dues, fees, and charges by eliminating the \$.20 credit for Philadelphia Stock Exchange ("Phlx") equity specialists' trades against Phlx Automated Communication and Execution System ("PACE") executions<sup>2</sup> for trades settling on or after January 2, 2004.<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, SCCP 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. SCCP has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>4</sup>

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

<sup>2</sup> PACE is Phlx's automated order entry, routing, and executing system. Phlx Rules 229 and 229A.

<sup>3</sup> SCCP previously implemented the \$.20 PACE specialist credit effective June 1, 2000. Securities Exchange Act Release No. 42804 (May 19, 2000), 65 FR 34244 (May 26, 2000) (SR-Phlx-00-42). A copy of SCCP's schedule of dues, fees, and charges is attached as Exhibit 2 to its proposed rule filing.

<sup>4</sup> The Commission has modified the text of the summaries prepared by SCCP.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of accelerating the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).