

the operative date will ensure that the CSE is able to operate in accordance with the terms and conditions of the Decimals Plan. For these reasons, the Commission finds good cause to designate that the proposal become operative immediately upon filing.<sup>15</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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 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 CSE. All submissions should refer to file number SR-CSE-00-01 and should be submitted by November 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-26112 Filed 10-11-00; 8:45 am]

**BILLING CODE 8010-01-M**

one cent. The Commission's June 8th Order requires the Participants to submit joint or individuals studies two months after Full Implementation (as defined in the Plan) regarding the impact of decimal pricing on system capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum quoting increment. If a Participant wishes to move to quoting in an increment of less than one cent, the Participant should include in its study a full analysis of the potential impact of such trading on the Participant's market and the markets as a whole. Within thirty days after submitting the study, and absent Commission action, the Participants individually must submit for notice, comment, and Commission action, proposed rule changes under Section 19(b) of the Exchange Act to establish their individual choice of minimum increments by which equities or options are quoted on their respective markets.

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43406; File No. SR-Phlx-00-39]

### Self Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Disqualification of Governors

October 3, 2000.

#### I. Introduction

On April 14, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission, 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> a proposed rule change relating to the disqualification of governors. On August 16, 2000, the Phlx filed Amendment No. 1 to the proposals.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on July 13, 2000.<sup>4</sup> No comments were received on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Phlx By-Law, Article IV, Section 4-8 describes the discussions and decisions in which members of the Phlx Board of Governors ("Board Members") must refrain from participation. The provision further specifies discussions and decisions that do not require Board Members to refrain from participation. The Exchange proposes to amend Phlx By-Law, Article IV, Section 4-8 to conform to the new Phlx 1999 Code of Conduct for Board Members and Committee Members ("1999 Code of Conduct"). The Phlx Code of Conduct, which was adopted in 1997 ("1997 Code of Conduct"), describes, among other things, the discussions and decisions in which Covered Persons must refrain from participation.<sup>5</sup> The Phlx Board of Governors revised the 1997 Code of Conduct in July 1999, modifying the

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

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

<sup>3</sup> Letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (August 16, 2000) ("Amendment No. 1"). Amendment No. 1 made a technical correction to the language of the proposed rule.

<sup>4</sup> Securities Exchange Act Release No. 43161 (August 16, 2000), 65 FR 51396 (August 23, 2000).

<sup>5</sup> Following the adoption of the 1997 Code of Conduct, the Exchange conformed the language in Phlx By-Law, Article IV, Section 4-8 to the language in the 1997 Code of Conduct. See Securities Exchange Act Release No. 39722 (March 4, 1998), 63 FR 12569 (March 13, 1998).

language regarding the disqualification of Covered Persons.

The Phlx's proposed rule change will amend its By-Law, Article IV, Section 4-8 to prohibit Covered Persons from participating in matters in which they or their immediate family have an interest.<sup>6</sup> The Exchange proposes to allow participation in matters where the Covered Person's interest arises solely from membership in the Exchange or a sub-class of membership, unless their impartiality might reasonably be questioned.<sup>7</sup>

#### III. Discussion

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, with the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(3)<sup>9</sup> that the rules of an Exchange be designed to assure a fair representation of its members in the administration of the Exchange's affairs.<sup>10</sup> The Commission believes that the proposal will prohibit the discussion and determination of Exchange matters by Covered Persons or their immediate family who have an interest in the matter, unless that interest is impartial and arises solely from membership in the Exchange or a sub-class of membership. The proposal will also add to the Exchange's present framework of conflict of interest provisions.<sup>11</sup>

<sup>6</sup> The 1999 Code of Conduct and the proposed amendment to Phlx By-Law Article IV, Section 4-8 define "immediate family" as a spouse, a parent, a mother-in-law, a father-in-law, a brother, a sister, a child, any other person living with the individual or any person for whom the individual provides at least 50 percent of that person's financial support per year.

<sup>7</sup> The phrase "a sub-class of membership" refers to the various categories of Phlx membership. Examples of sub-classes include: equity members and options members; on-floor and off-floor members; and specialists and floor brokers on each floor. The Exchange represents that many decisions in Board and committee meetings, such as fees on equity floor transactions or requirements for arbitration in customer contracts, apply to only one or more of these sub-classes and not to others. The Exchange represents that it does not intend to disqualify persons from making decisions solely because they are part of a sub-class, such as market makers or off-floor members, which will be affected by the outcome of the decision.

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

<sup>9</sup> 15 U.S.C. 78f(b)(3).

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

<sup>11</sup> See e.g., 1999 Code of Conduct (requiring Covered Persons to make prompt disclosure of any interest that could reasonably appear to violate the 1999 Code of Conduct (and Phlx By-Law Article X,

#### IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change, SR-Phlx-00-39, be and hereby is approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-26111 Filed 10-11-00; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43407; File No. SR-Phlx-00-072]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending Rules 501, 505, and 506 Regarding Allocation and Specialist Appointment, as well as Rule 748, Supervision, To Reflect Current Circumstances on the Equity Foreign Currency Option and Option Trading Floors

October 3, 2000.

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 July 25, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. 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 Rules 501, 505, 506, and 748 to require certain information be provided to the Allocation, Evaluation and Securities Committee ("AES Committee") for approval and to require certain minimum staffing levels for specialist

units. Specifically, the Exchange proposes to amend Rule 501(b)(4) to require that option and foreign currency option specialist units provide detailed information on their application to become a specialist unit regarding their back-up arrangements with regard to financial and staffing support.

The proposal would add Rule 501(c) to require that individuals be approved by the AES Committee prior to acting as a specialist on behalf of a specialist unit. In addition, proposed Rule 501(c) would require that applications for individuals to act as specialist shall include any other special requirements that the AES Committee may require for approval. Proposed Rule 501(c) would also require that the AES Committee or its designee approve an individual prior to that individual moving from one specialist unit to another specialist unit.

The proposal would re-designate Rule 501(c) as Rule 501(d), which requires that to be approved and retain their specialist privileges, option and foreign currency option specialists must maintain the clearing arrangements and capital structure stated on their application. In addition, Rule 501(d) would require that changes regarding their back-up arrangements must be submitted to and approved by the AES Committee. The proposal would also amend Rule 501(d) to require option and foreign currency option specialists to maintain a minimum staffing level for each quarter turrel of space on the trading floor.

The proposal would add Rule 501(e), which is similar to Rule 501(d), and would contain the same staffing requirements for equity specialists as are currently contained in Rule 501(c)(2).

The proposal would re-designate Rule 501(d) as Rule 501(f). The proposal would amend the language of 501(f) to state that once an applicant is approved by the AES Committee as a specialist unit, any material change in the capital or staff of the unit or any move by the head or assistant specialist must be reported in writing to the AES Committee within two days of the change.

The proposal would add Rule 501, Commentary .02, which states that for purposes of rule 748 on Supervision, individuals employed or associated with the back-up specialist will be considered engaging in a business activity of the specialist unit that they are assisting. Rule 748(b) would also be amended to refer to this situation.

The proposal would amend Rule 505 to require registrant specialist units to report material changes on the respective equity, option and foreign

currency option registration forms to the AES Committee.

The proposal would amend Rule 506 to codify expressly that AES Committee may require applicant specialist units to provide other information, including system order acceptance and execution levels, and guarantees on the application for a particular equity or option. The proposal would require that, should a specialist be allocated that equity or option, the specialist would be immediately required to notify the Exchange staff and submit for approval to the AES Committee or its designee in writing any change to the respective system acceptance and execution levels or any other material changes on that application.

The proposal would replace references to the Department of Securities in Rules 505 and 506 with references to the Exchange staff. The text of the proposed rule change is available at the Phlx and the Commission.

#### II. Self-Regulatory Organization's Statements of the Purpose of, and the 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 section 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

The purpose of the proposed rule change is to provide the AES Committee with the appropriate information and a greater understanding of the specialist unit's operation when approving a prospective specialist unit for trading privileges, as well as approving the allocation, reallocation and transfer of equity, option, and foreign currency option books to specialist units. Specifically, proposed amendments to Rule 501(b)(4) regarding back-up arrangements for staffing and capital are intended to help ensure that specialist books will continue to trade on the floor in an efficient manner by requiring the specialist unit have sufficient staff to handle the high volume in busy markets and requiring the back-up specialist to

Section 10-9(b) (authorizing the Exchange's Audit Committee to conduct reviews of any alleged improper conduct and recommend appropriate action to the Board).

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

<sup>13</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.