Regulation believes that the proposed rule change is in the public interest because it will encourage the use of mediation, especially for small claims.

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

NASD Regulation 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, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer periods to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

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 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 NASD. All submissions should refer to file number SR–NASD–00–11 and should be submitted by June 14, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13068 Filed 5–23–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42791; File No. SR–Phlx–00–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adopting a Pilot Program To Assess a Monthly Credit of Up to $1,000 to Qualified Members

May 16, 2000.

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 May 15, 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 Exchange. Today the Phlx filed an amendment to the proposed rule change (''Amendment No. 1'').[3] 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 fees, dues, and charges to allow for a monthly credit of up to $1,000 to be applied against all fees, dues, charges, and other amounts as may from time to time be owed to the Exchange that month, except fines, late fees, out-of-pocket expenses,[4] pass-through costs,[5] capital funding fees,[6] and any fees paid by equity trading permit holders in respect of any trading permits the Exchange may issue (''credit-eligible fees'') [7] by members who own the membership by which they are a member (''member-owners'') and certain other categories of members described below.[8] This credit is proposed as a six month pilot program.

In addition to member-owners, a monthly credit of up to $1,000 may be applied against credit-eligible fees incurred by the following persons, who are so closely connected to the owners that the Exchange believes they should be treated as member-owners: (1) All members who are a party to an A–B–C Agreement [9] with a member organization who owns that membership; or (2) all members who are lessees if: (a) the member is also an owner of a different membership; (b) the member is an immediate family member of the owner of that membership; [10] (c) the member is associated with a member organization in which the owner has an interest of at least ten percent; (d) the member leases from an owner or a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Edith Hallahan, Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 15, 2000. Amendment No. 1 summarizes the two comment letters the Exchange received in response to this proposal and clarifies who is eligible for this credit. Due to the substantive nature of Amendment No. 1, this proposed rule change is deemed filed and immediately effective as of today.

[4] Out-of-pocket expenses include charges for wireless telephone services, postage, ILX machines and Dow Jones News Service.

[5] Pass-through costs include charges for member health insurance and parcel delivery services.

[6] Capital funding fees are fees assessed on owners to provide funding for technological improvements and other capital needs. The Commission approved the capital funding fee for a pilot period extending to July 6, 2000. *See* Securities Exchange Act Release No. 42405 (February 8, 2000) 65 FR 8226 (February 17, 2000) (SR–Phlx–99–51); and Securities Exchange Act Release No. 42714 (April 24, 2000), 65 FR 25782 (May 3, 2000) (SR–Phlx–00–29). The proposal to adopt the capital funding fee on a permanent basis is pending with the Commission. *See* Securities Exchange Act Release No. 42318 (January 5, 2000), 65 FR 2216 (January 13, 2000) (SR–Phlx–99–49).

[7] The credit-eligible fees are fees assessed on members and include transaction as well as trading floor fees. Transaction fees include equity transaction value charges, equity floor brokerage transaction fees, option comparison charges, and option transaction charges. Trading floor fees include charges for trading post/booth, controller space, shelf space, transmission, execution/communication charge, and floor facility fees. Fees assessed on foreign currency options participants are not considered credit-eligible fees.

[8] This proposed rule change is intended to replace SR–Phlx–99–54, which was filed with the Commission on December 22, 1999 and withdrawn by letter dated May 13, 2000.

[9] Pursuant to Phlx Rule 940, the parties to an A–B–C Agreement are an employee, general partner, or officer, and the member organization with which such person is associated. The member organization provides all or part of the funds for the purchase of a membership of which the legal title is placed in the member and the equitable title is placed in the member organization.

[10] Immediate family member is defined as a member's spouse, parents, stepmother, stepfather, mother-in-law, father-in-law, brothers, brothers-in-laws, stepbrothers, sisters, sisters-in-law, stepsisters, children, stepchildren, and any other person living with the member for whom the member provides at least 50 percent of his/her financial support per year.

related entity of the owner who provides order flow to the Exchange through the member consisting of at least 5,000 equity trades over the preceding twelve months or 50,000 option contracts over the preceding twelve months; or (e) the member leases from a clearing firm or a related entity of the clearing firm that provides clearing services to the leasing member. The aforementioned categories (including member-owners) are hereinafter to as ''qualified members.''

Specifically, the amount of credit-eligible fees owed to the Exchange shall be reduced on a monthly basis by an amount equal to: (1) $1,000 per month if such fees, dues, charges, and other amounts equal to or greater than $1,000, or (2) the amount of such fees, dues, charges and other amounts if such fees, dues, charges and other amounts are less that $1,000.[11] Credits may not be carried over from one month to the next and only one credit of up to $1,000 is available per membership per month.

Credits cannot be shared among members, except qualified member(s) in the same member organization may aggregate their credit(s). The monthly credit of up to $1,000 will be applied against the invoice of the member or member organization with which is associated. However, in no event shall the aggregate credit(s) exceed $1,000 per membership per month.

The Exchange initially intends that the request to receive the credit will be application driven, which applicant submitting an Exchange form delineating the credit-eligible fees for that calendar month. The credit is proposed for a six month pilot period.[12] The Exchange reserves the right to suspend the credit at any time.

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

a. *Introduction.* The purpose of the proposed rule change is to amend the Exchange's schedule of fees, dues and charges to allow for a monthly credit of up to $1,000 to be applied against certain fees, dues, charges and other amounts, as defined above, owed to the Exchange by a qualified member of the Exchange.

As more fully explained below, the Exchange believes that the proposed credit should provide qualified members with additional liquidity and an incentive for seat owners to trade on the Exchange. In turn, the Exchange believes that this will introduce additional liquidity into the marketplace to the benefit of the investing public.

The Exchange believes that leasing of memberships by passive holders of equitable title to lessees who trade on the Exchange (*e.g.,* members) does not necessarily promote the long-term interests of the Exchange. Although the practice of leasing by financial investors to members is permitted by the rules of the Exchange, and may provide an important means by which members can access trading rights on the Exchange, the Exchange believes that lessors who are passive financial investors have a limited stake and interest in the liquidity, technology or operations of the Exchange.

Moreover, such lessors have limited practical ability to influence the affairs of the Exchange because practically all voting rights are vested in the ''members'' under Phlx's Certificate of Incorporation and By-Laws.[13]

The Exchange also believes that members who acquire membership and access trading on the Exchange by means of a lease may in many cases have a very limited stake in the well-being and survival of the Exchange. Although such members may have voting rights, they have no capital investment in their membership, and, because leases typically may be terminated on 30 days notice,[14] they do not necessarily have the incentive to act in the long-term best interests of the Exchange.

Specifically, by terminating a lease with 30 days notice, lessees who do not have ''other'' business interests or relationships with the Exchange beyond the mere existence of a lease (such as those relationships enumerated in part b. below) may, and often do, leave the Exchange to trade on another exchange, perhaps seeking to trade a certain ''hot'' option or other product. Thus, their potential commitment to the Exchange's long-term well-being and survival is undercut by their easy ability to pursue business endeavors that further their own well-being. Further, although member-lessees may be appointed to certain Exchange committees and sub-committees, their motivation to devote the time to such service may be less, as is their incentive to make decisions focused on the long-term. Both daily and longer terms, strategic decision-making could thus be affected.

This short-term commitment may also bear on the quality and quantity of liquidity provided on the Exchange. Building order flow commitments with order flow providers is a long-term endeavor, often requiring regular performance, evaluation, and most importantly, a relationship with the trading crowd providing liquidity. Thus, familiarity and consistency of crowd participation are an important marketing mechanism to order flow providers. Providing liquidity also involves a longer-term view of sacrificing profit today for continued order flow, as well as acknowledging that not every order is a profitable one, but continuous order flow, spawned by ample liquidity, should, over time, provide more opportunity for additional order flow.

Lessees that do not have other business interests or relationships such as those referred to in part b. below may also have a limited stake in the technology of the Exchange, including participation in and good use of technology, nor would they necessarily have an incentive to invest in the longer-term development of that technology. Such investment is not only financial, but also strategic. Such lessees may also have a limited stake in the operations of the Exchange, including the continued long-term refinement and upgrading of facilities, other equipment and the pricing of such operations. In sum, lessees, absent other factors tying them to the Exchange, may be less vested in the long-term success of the Exchange, in terms of a lesser incentive to create liquidity, invest in technology and be active in strategic and daily decision-making.

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[11] For example, if a member has $1,500 in credit-eligible fees for the month, such member is entitled to the full $1,000 credit. However, if the member has $600 in credit-eligible fees for the month, such member is entitled to a $600 credit.

[12] This credit is part of the Exchange's long-term financing plan, which separately includes the $1,500 capital funding fee.

[13] A lessor entitled to vote in any decision relating to a compromise or arrangement between the Phlx and its creditors or its members, or relating to a reorganization of the Phlx. *See e.g.* Article Thirteenth of the Exchange's Certificate of Incorporation and Phlx By-Law Article XII, Section 12–6.

[14] *See* Phlx Rule 930(b).

In contrast, the Exchange is of the view that members who own their own memberships (and their functional equivalents, such as members who lease their members from close family members), and members who have certain other business or financial relationships which owners who are active on the Exchange (*e.g.,* members who are associated with member organizations and hold their memberships pursuant to ''A-B-C Agreements'') have a combination of financial incentives and voting rights (in some cases, indirectly via the owners with whom they are closely related or associated) to create liquidity on the Exchange, to invest in systems and compliance infrastructure, to be active in and informed about the decision-making processes of the Exchange, and otherwise to act in the Exchange's long-term best interests. By providing the credit described in this filing to these groups of members, the Exchange expects to create economic incentives for owners to trade on the Exchange by actively using their memberships (or selling them to persons who would do so) and for members to organize their affairs in ways that, the Exchange's view, properly align the interests of the members with the long-term interest of the Exchange. The Exchange also believes that the credit should help retain or create liquidity on the Exchange by freeing up funds that member-owners of their functional equivalents may otherwise be expending on credit-eligible fees.[15]

Although the credit described in this filing is available to some Exchange members and not others, it meets the criteria set forth in Sections 6(b)(4)[16] and 6(b)(5)[17] of the Act because it: (i) provides for ''* * * the equitable allocations of dues, fees and other charges among its members * * * and other persons using its facilities;'' and (ii) is not designed ''* * * to permit unfair discrimination between customers, issuers, brokers or dealers.'' Although the Exchange is not aware of precedents in which other exchanges have established fee or credit programs based upon ownership of seats or the connection between lessees and their lessors, as the Phlx proposes to adopt in this filing, the Commission has approved many exchange fee and credit arrangements that do not threat all members (or other persons covered by Sections 6(b)(4)[18] and (5))[19] equally, such as credits and discounts based on transaction volume, fees based upon the usage by certain members of equipment or other services or resources of an exchange, and fee structures that distinguish among the various activities of persons and firms (*e.g.,* specialists versus floor brokers, or specialists versus market makers). As with the proposed credit, such measures are designed to promote and encourage certain behaviors and/or discourage others. The Exchange believes that this is an appropriate, nondiscriminatory business strategy.

As more fully articulated below, the Exchange believes that the credit is equitably distributed and not unfairly discriminatory, because it is based on legitimate, reasonable business interests of the Exchange, and is reasonably designed to further those interests. Moreover, it does not unfairly single out individuals or groups for personal or political reasons. To the contrary, and member may become eligible for the credit by changing the way in which such member finances his or her access to the Exchange by purchasing the membership or by changing the member's lease arrangement.

b. *More Detailed Rationale Specifically Applied to the Various Eligibility Criteria—i. Member-Owners.* In many areas of economic life, businesses and governments establish incentives to encourage behavior that is deemed desirable. In the case of exchanges, volume discounts and credits encourage members to direct transaction volume and trading activity to the exchange; other fee structures are designed to deter excessive usage of exchange resources or to cause scarce resources to be allocated more efficiently (*e.g.,* equipment service fees or fees relating to use of post/booth space on the floor).[20] The Exchange, as a matter of policy, believes that owner-membership or its functional equivalents as described above, should be encouraged because:

(A) Unlike passive, financial investors, owner-members risk their capital by their trading and other activities on the floor, thereby (in many cases) creating liquidity in our market and generating revenues for the Exchange, both directly though transaction-based revenues, and indirectly, by generating activity that results in tape revenues under the Consolidated Tape Association (''CTA'') and Options Price Reporting Authority (''OPRA'') plans.[21]

Seat ownership is one aspect of Exchange ''investment'' and the actual use of that membership by the qualified member is a different form. Member-owners on their functional equivalents, have *additional* operational and market risks. For example, a qualified member who is also a specialist or market maker may have additional risks related to fluctuations in the securities market and order-processing errors in addition to market risks associated with seat ownership. Similarly, a qualified member who is also a specialist may have risks (in addition to seat risk) associated with the specialists' obligation to promote a fair and orderly market and, particularly, maintain the limit order book. Furthermore, in addition to any fees assessed on owners, qualified members also contribute to the Exchange by paying transaction fees, such as equity transaction value charges, equity floor brokerage transaction fees, option comparison charges and option transaction charges, and trading floor fees, such as trading post/both, controller space, shelf space, transmission, execution/communication charges, and floor facility fees.

(B) Unlike members who lease their seats under typical lease arrangements that may be cancelled on 30 days' notice, member-owners have a significant capital investment at risk; and

(C) Unlike owners that are not members, member-owners may have voting rights under the Exchange's by-

[15] The Exchange notes that, as part of its overall strategic financing plan, contemporaneously with the implementation of the credit described in this filing, it is separately instituting a $1,500 monthly capital funding fee upon all ''owners,'' regardless of their level of activity (if any) of the Exchange. *See supra* notes 6 and 12. Although the credit is not available to offset all or any portion of the capital funding fee, the credit will enable member-owners and others eligible for the credit to defray a portion of the transaction and other fees charged by the Exchange (and that, in general, result from member activity on the Exchange), thereby effectively reducing, for member-owners and other eligible members the cost of trading on the Exchange. Therefore, the credit may also have the indirect effect of blunting the incremental economic burden of the capital funding fee for owners who are active and, directly or indirectly, trading on (or otherwise providing certain economic benefits to) the Exchange. In addition, the credit frees up funds for trading activity on the Exchange that would otherwise be used for the payment of credit-eligible Exchange fees.

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78f(b)(5).

[20] *See e.g.* Securities Exchange Act Release Nos. 41748 (August 16, 1999), 64 FR 46218 (August 24, 1999) (SR–CBOE–99–34); 40496 (September 29, 1998), 63 FR 54175 (October 8, 1998) (SR–PCX–98–42); and 41108 (February 25, 1999), (64 FR 10516 (March 4, 1999) (SR–BSE–99–2).

[21] The CTA Plan and the OPRA Plan are approved by the Commission as national market system plans under Rule 11Aa3–2, 17 CFR 240.11Aa3–2, governing the dissemination of market information for certain equity securities and options, respectively; these plans govern both the fees that can be charged for such information as well as the distribution of revenues derived from those fees among participants in these plans, including the Exchange.

laws, and may participate on certain Exchange committees.[22]

Because of their dual interest in preserving and increasing the value of their memberships, and in the technological, operational, and regulatory infrastructure that affects the present and future conditions of transacting business on or at the Exchange, the Exchange believes that member-owners have powerful incentives to create liquidity on the Exchange, and to participate responsibly in the business life of the Exchange through the exercise of voting rights, and through service on the Board and certain Exchange committees. The concept (and the underlying policy) of making the credit available to member-owners is not unlike that of the federal government in providing tax incentives to homeowners that are not available to renters. The long-term capital stake of the homeowner in his or her property promotes various behaviors that have social utility in that it fosters community-oriented behavior, and increases the prospect that the homeowner will make further socially useful investments in the property and in the neighborhood.

The Exchange believes that similar principles are involved in the instant case. The ability to lease memberships has been available for many years. Over time, the equitable ownership of memberships by passive financial investors has become a very pervasive phenomenon at the Exchange, with 324 of the Exchange's 505 memberships being owned by such financial investors.[23] Of those memberships owned by passive financial investors, approximately 48 memberships are currently dormant (neither used for active trading nor leased).[24] Although the Exchange believes that leasing of memberships has a legitimate role in providing members a means of accessing trading rights on the Exchange, it also believes that the extent to which long-term capital investment is currently divorced from voting rights and trading interest in not healthy insofar as it relates to the long-term viability of the institution and its membership as a whole. The credit should create an incentive for owners to actively use their trading rights though membership and for members to reconsider the manner in which they finance their access to the Exchange. Furthermore, the Exchange believes that the credit will free up funds for those owners who are most likely to put their capital to work by trading and creating liquidity on the floor. The credit may also effectively (but indirectly) lessen the overall impact of the capital funding fee on those owners who are trading at the Exchange and (because the credit may be applied against transactional fees) create further incentives to trade.

The Exchange notes that no member may claim that his or her lack of eligibility for the credit is unfair or discriminatory. Any member may obtain eligibility for the credit by changing his or her method of financing their access to the Exchange—*e.g.,* by purchasing their membership and (if they choose) borrowing from third-party lenders to effect that purchase. Any owner may obtain eligibility for the credit by, for instance, becoming an Exchange member (if they qualify for this and subject to the procedures set forth in the Exchange's rules).

ii. *Members/Member Organizations with A–B–C Agreements.* By definition, with respect to A–B–C Agreements, there is a very close nexus between a member and the member organization with whom the member is associated; in general, the member is an employee of the member organization. This close connection is reflected in the fact that the member organization provides all or part of the funds for the purchase of the membership of which the legal title is placed in the member, while the equitable title remains with the member organization.[25] In addition, the Exchange's By-Laws state, in part, that ''[a]n A–B–C Agreement is a contract between the member and member organization with which the member is associated in which a portion of the risk of fluctuations in the value of the membership shall rest with the member organization rather than with the member.'' [26]

Pursuant to the A-B-C Agreement, the member contributes to use of the membership to the member organization and subjects the membership to the claims of the creditors of the member organization. Moreover, the member organization pays the dues, fees, and other charges on behalf of the member. Thus, given this unique business relationship, owners who are member organizations have significant capital investment at risk and have a long-term interest in preserving and increasing the value of their membership, much like member-owners. For this reason, the Exchange is providing the credit to members who are a party to an A-B-C Agreement with a member organization who owns that membership. [27]

iii. *Lessees.* As stated previously, although leasing arrangements are permitted, lessees, other than the five types of qualifying members discussed in detail below (''non-qualifying lessees''), may have a limited stake in the long-term well-being of the Exchange. In fact, non-qualifying lessees may lack the incentive to engage in certain types of behavior that promote the long-term best interests of the Exchange, including providing liquidity and investing in technology enhancements. Specifically, non-qualifying lessees who do not put their own (or a member with whom they have a close nexus) capital at risk with respect to membership may provide liquidity or order flow with less of a long-term view and more of a focus on their current market risk only. This view may be at odds with behavior needed to address long-term Exchange needs. These non-qualifying lessees who do not have the types of additional connections to owners on the Exchange described below, may only have the incentive to participate in a self-focused way for their short-term benefit. If the credit were made available to all lessees, it would not serve its purpose as an inducement to promote owner-membership or other relationships to the Exchange that the Exchange believes are the most conductive to its continued health and success. Therefore, the Exchange is not making the credit available to all lessees. However, the Exchange is seeking to provide the credit to those qualified members whose relationship with the owners from whom they lease their seats is such that the Exchange believes they (either individually or indirectly when viewed in conjunction with their owners) have incentives properly aligned with the long-term interests of the Exchange.

(A) Members who are Lessees but who also are Owners of Different Memberships. Members who are lessees but who also are owners of a different membership should be accorded the same treatment as the traditional member-owners who were previously discussed. These members, who are also owners, have an interest in preserving and increasing the value of their membership as well as an interest in preserving and increasing the standard of technology and the operational and regulatory infrastructure that affects the present and future conditions of transacting business at the Exchange. As with traditional member-owners, the Exchange believes that the credit will

[22] *See supra* note 13.

[23] As of March 31, 2000, 324 memberships were subject to lease agreements. This number may change on a monthly basis.

[24] As of March 31, 2000, 48 seats were dormant (neither used for active trading nor leased).

[25] *See* Phlx Rules 940 and 941.

[27] *See supra* note 3.

free up funds for those members who are also owners thereby encouraging them to put their capital to work by trading and creating liquidity on the floor. As previously discussed, the credit may also effectively (but indirectly) lessen the overall impact of the capital funding fee on those owners who are trading at the Exchange.

(B) Members who Lease from Close Family Members. At the Phlx, many members firms are family businesses, which choose to structure their operations with the owner being a relative (rather than that member) for tax or estate planning purposes. The Exchange believes that there is commonality of interest in property of close family members, thus affording the credit to members who lease from close family members. This concept is one that is widely accepted, especially in connection with rules relating to the securities industry and tax law. For example, Rule 16a–1(a)(2) under the Act [28] defines the term ''beneficial owner'' to mean any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares a direct or indirect pecuniary interest in the equity securities. Indirect pecuniary interest is then defined to include securities held by members of a person's immediate family sharing the same household.[29] In addition, Rule 701 under the Securities Act of 1933 [30] exempts from Section 5 of the Securities Act [31] certain offers and sales of securities under a written compensatory benefit plan established by the issuer for the participation of their employees and their family members who acquire such securities from such persons though gifts or domestic relations orders. Family members are defined in Rule 701(c)(3) [32] the same as ''immediate family'' is defined in Rule 16a–1(e).[33]

Tax laws also recognize the commonality of interest in property of close family members. For example, the Internal Revenue Code (''IRC'') recognizes the shared interests of family members by way of attributing the ownership of stock held by close family members to the taxpayer.[34] The IRC treats stock owned by these close family members as owned by the taxpayer in determining the tax liability of the taxpayer in various situations.[35]

A further example is the National Association of Securities Dealers, Inc. (''NASD'') Freeriding and Withholding Interpretation,[36] which restricts sales by NASD members to accounts in which so-called ''restricted persons'' have a beneficial interest. Such restrictions are also applicable, with some exceptions, to immediate family members of those restricted persons.

The Exchange believes that it should not penalize members who choose to lease memberships from close family members, as it believes that these persons are the functional equivalents of member-owners, and the same rationale applies to giving the credit to these members as to member-owners.

(C) Members who are Associated with a Member Organization in which the Owner has an Interest of at Least Ten Percent. Members who are lessees and are associated with a member organization in which the owner has at least a ten percent interest also should be eligible for the credit based on their closely aligned interests with the owner. The federal securities laws and rules of the securities industry have long recognized that a ten percent ownership interest is a significant capital investment. For example, Section 16 of the Act [37] requires any person who is the beneficial owner of more than ten percent of an equity security registered under Section 12 of the Act [38] to file a statement with the Commission indicating his ownership interest. Section 16 [39] also treats such beneficial owners as a company insiders and limits their ability to realize ''short swing'' profits. In enacting Section 16,[40] the Congress found that a ten percent owner was sufficiently involved in the affairs of the issuer to be treated as an insider.

Moreover, for purposes of NASD Conduct Rule 2720, which restricts the ability of an NASD member to participate in the distribution of a public offering of its own securities or the securities of the member's parent or affiliate, a company is presumed to control a member (and thus is an affiliate) if the company beneficially owns ten percent or more of the member firm. Finally, under the NASD's Freeriding and Withholding Interpretation,[41] an individual with a ten percent or more equity interest in an NASD member firm is deemed restricted by virtue of his ownership interest, and, thus, NASD member firms may not sell so-called ''hot issues'' to that individual.

In each of these examples, Congress or the NASD found that a ten percent owner is sufficiently involved in the affairs of the subject entity to be subject to the applicable restriction. A similar analysis is applicable with respect to owners of Phlx memberships who hold a ten percent or greater interest in the very member organization with which the lessee is associated. The interests of the owner, the member lessee and the member organization are sufficiently aligned to allow the lessee member the benefit of the credit.

(D) Members who Lease From Owners or Their Affiliates who Provide Order Flow to the Exchange Member. Similar to member-owners and other eligible members discussed above, members who lease from owners or their affiliates who provide order flow to the Exchange through the member have a direct contractual relationship with that owner. For example, a floor broker who executes orders entered by the owner from whom the member leases his or her seat has a fiduciary relationship with that owner. The member derives income, by way of commissions, from the order floor provider and the order flow provider, in turn, provides revenue to the Exchange mainly by way of transaction fees (and indirectly via tape revenues). Giving a credit to members in this situation should encourage the member to fully maximize the business relationship between the floor broker and order flow provider by encouraging the member to get more order flow, which in turn equates to an increase in fees paid by the floor broker to the Exchange. The Exchange believes that by extending the credit to this category of members who are closely associated with the owner, it is encouraging behavior that is beneficial to the long-term interests of the Exchange, *e.g.,* providing more order flow.

(E) Members who Lease From a Clearing Firm or a Related Entity of the Clearing Firm That Provides Clearing Services to the Leasing Member. Members who lease from a clearing firm or related entity of the clearing firm that provides clearing services to the leasing member should also be eligible to receive the credit. Members have a close connection to their clearing firms, or

[28] 17 CFR 240.16a–1.

[29] Immediate family is defined to mean any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-on-law, and shall include adoptive relationships. 17 CFR 240.16a–1(e).

[30] 17 CFR 230.71.

[31] 15 U.S.C. 77e.

[32] 17 CFR 230.701(c)(3).

[33] 17 CFR 240.16a–1.

[34] *See* 26 U.S.C. Section 318.

[35] *See* 26 U.S.C. Section 301 et. seq.

[36] NASD Conduct Rule IM–2110–1. The Freeriding and Withholding Interpretation is based on the premise that NASD members have an obligation to make a bona fide distribution of securities of a public offering that trade at a premium in the secondary market.

[37] 15 U.S.C. 78p.

[38] 15 U.S.C. 78L.

[39] 15 U.S.C. 78p.

[40] *Id.*

[41] *See supra* note 33.

related entity of the clearing firms, in that the clearing firms provide important and essential services by contractual agreement with such members; for instance, they guarantee members' trades. In addition, clearing firms lend money and extend credit; they also manage risk by way of tracking positions and other monitoring functions. Moreover, the clearing firm offers various ancillary services to the members, including stock executions services, office space and other business amenities. Therefore, given this close connection between the members and clearing firms or their affiliates, the Exchange believes that the credit is appropriate and should further their joint interest in the well-being of the Exchange.

2. Statutory Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[42] in general, and with Section 6(b)(4)[43] in that it provides for the equitable allocation of reasonable dues, fees and other charges.

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

The Exchange believes that the proposed rule imposes no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Although written comments were not solicited, the Exchange issued a circular dated September 27, 1999 which announced certain actions taken at the September 1999 Phlx Board of Governors meeting. These actions included the approval of a monthly credit of up to $1,000 and invited telephone comments to be made to the Chairman. The Exchange has received two written comments; although these comments do not specifically address the proposed $1,000 credit, they do make reference to a ''rebate'' and a ''credit.'' Both letters raised the issue, among other things, of fairness in that some members would receive the credit and not others; this issue is addressed in detail in section A.1. above.[44]

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

The foregoing proposed rule change has become immediately effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[45] and Rule 19b–4(f)(2)[46] thereunder because it establishes a due, fee, or other charge. 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 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 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, 450 Fifth Street NW., Washington, DC 20549. 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–00–44 and should be submitted by June 14, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

Margaret H. McFarland,

Deputy Secretary.

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[42] 15 U.S.C. 78f(b).

[43] 15 U.S.C. 78(b)(4)

[44] *See supra* note 3.

[45] 15 U.S.C. 78s(b)(3)(A)(ii).

[46] 17 CFR 240.19b–4(f)(2).

[47] 17 CFR 240.19b–4(f)(6)(iii).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before June 23, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Request for Information Concerning Portfolio Financing.

Form No: SBA Form-857.

Frequency: On Occasion.

Description of Respondents: SBIC Investment Companies.

Annual Responses: 2,160.

Annual Burden: 2,160.

Jacqueline White,

Chief, Administrative Information Branch.

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BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.