

contested elections, will be administered in a manner that is fair to all participants in the election process.

Finally, the Commission believes that it is reasonable for the Exchange to consolidate all three of its Quality of Markets Committees into one Quality of Markets Committee responsible for all three Phlx trading floors. The Commission does not disagree with the Phlx's conclusion that the resulting committee could function more efficiently by taking advantage of the overlap in issues that face each of the three current committees. The Commission notes that the resulting committee will be required to contain at least as many non-industry as industry members, which will ensure that the committee will retain appropriate non-industry representation. While current rules require each of the Quality of Markets Committees to be "equally balanced," the new language will, in the Phlx's view, give it more flexibility in the new committee's composition. Without specifically addressing this issue, the Commission simply notes that by requiring the newly merged committee to be comprised of broad representation with at least the same number of non-industry and industry directors, the new rule language should ensure that the composition of the new Quality of Markets Committee is consistent with the section 6(b)(3) requirement for fair representation in the administration of the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-PHLX-99-26), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42883; File No. SR-Phlx-00-40]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Proposing To Amend Phlx By-Law Article IV, Section 4-18

June 1, 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 April 21, 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 and II below, which Items I and II 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 and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx By-Law Article IV, sections 4-18(a) and (e) by expanding its indemnification and insurance coverage to directors and committee members of the Exchange. Below is the text of the proposed rule change. New language is *italicized*.

By-Law Article IV

Indemnification

Sec. 4-18.(a) Right to Indemnification. Each person who was or is made a party to or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was Governor, officer, or committee member of the Exchange or is or was serving at the request of the Exchange as an officer, *director*, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnatee"), whether the basis of such proceeding is alleged action in an official capacity as a Governor, officer, *committee member*, *director*, employee or agent or in any other capacity while serving as a Governor, officer, *committee member*, *director*, employee or agent, shall be indemnified and held harmless by the Exchange to the fullest extent authorized by

the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Exchange to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including attorney's fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnatee who has ceased to be a Governor, officer, *committee member*, *director*, employee or agent and shall inure to the benefit of the indemnatee's heirs, executors and administrators; provided, however, that, except as provided in paragraph (c) hereof with respect to proceedings to enforce rights to indemnification, the Exchange shall indemnify any such indemnatee in connection with a proceeding (or part thereof) initiated by such indemnatee only if such proceeding (or part thereof) was authorized by the Board of Governors of the Exchange.

Section 4-18(b) through (d). No change.

Sec. 4-18.(e) Insurance. The Exchange may maintain insurance, at its expense, to protect itself and any Governor, officer, committee member, *director*, employee or agent of the Exchange or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Exchange would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

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 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 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 Phlx represents that the purpose of the proposed rule change is to clarify the original intent of the Exchange, by expanding the Exchange's indemnification and insurance coverage to include persons serving at the request of the Exchange as a Governor, officer, committee member, *director*, employee, or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan. Although Governors, officers,

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

employees, and agents are expressly covered by the relevant provisions, the words "director" and "committee member" were inadvertently omitted from Phlx By-Law Article IV, section 4-18(a) when it was last amended on August 22, 1997.³ The word "director" was also inadvertently omitted from Phlx By-Law Article IV, section 4-18(e).⁴

The Exchange believes that the proposed amendments to its By-Law Article IV, sections 4-18(a) and (e) will remove any uncertainty as to whether a person serving as a director or committee member of another entity, at the request of the Exchange, is entitled to mandatory indemnification to the fullest extent provided in the Exchange's By-Laws.⁵ The Phlx claims that such persons arguably are already covered as "agents" in sections 4-18(a) and (e). The Phlx, however, proposes to amend By-Law Article IV, sections 4-18(a) and (e) to make this coverage more explicit. The Phlx believes that clarifying the extent of its indemnification and insurance coverage is important in the recruitment of qualified persons to serve as Governors, directors, committee members and or agents for the Exchange, to actively participate in Exchange Governance, and to represent the Exchange on the boards of other committees and entities.

2. Statutory Basis

The Phlx represents that the proposed rule change would afford persons such as Governors, employees, agents, committee members, and directors for the Exchange, mandatory indemnification and insurance coverage to the fullest extent provided in the Exchange's By-Laws. For this reason, the Exchange believes that the proposed rule change is consistent with section 6 of the Act⁶ in general, and in particular, with section 6(b)(5),⁷ in that it is designed to promote just and equitable principles of trade, as well as to protect investors and the public interest.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange did not receive any written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission has reviewed the Phlx's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of section 6 of the Act⁸ and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with section 6(b)(5) of the Act,⁹ because it promotes just an equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and protects investors and the public interest, by permitting persons serving as committee members and directors for the Exchange to receive mandatory indemnification and insurance coverage as provided in the Exchange's By-Laws.¹⁰

The Commission finds that the Phlx's proposed rule change will correct the Phlx's inadvertent omission of persons serving as directors and committee members for the Exchange from its indemnification and insurance provisions, thus clarifying the Exchange's original intentions. The Commission also supports the Phlx's goal of attracting qualified candidates to serve as Governors, directors, committee members and/or agents for the Exchange, to participate in Exchange Governance, and to represent the exchange on the boards or other committees and entities.

The Commission finds good cause for approving the proposed rule change (SR-Phlx-00-40) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, the Commission notes that other exchanges, the National Association of Securities Dealers Regulation, Inc. ("NASD Regulation") and the Nasdaq Stock Market, Inc. ("Nasdaq") have similar indemnification and insurance

provisions.¹¹ The Commission also notes that the proposed rule change concerns issues that previously have been the subject of a full comment period pursuant to section 19(b) of the Act.¹² Accordingly, the Commission believes that there is good cause, consistent with section 6(b)(5) and 19(b) of the Act,¹³ to approve the proposal on an accelerated basis.

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 at 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 refer to File No. SR-Phlx-00-40 and should be submitted by June 29, 2000.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁴ that the proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

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³ See Securities Exchange Act Release No. 38960 (August 22, 1997), 62 FR 45904 (August 29, 1997).

⁴ Telephone conversation between Murray Ross, Vice President and Secretary, Phlx, and Susie Cho, Attorney, Division of Market Regulation ("Division"), Commission (May 8, 2000).

⁵ *Id.*

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

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

¹¹ See Chicago Board Options Exchange, Inc., Constitution Article IX, Section 9.1; New York Stock Exchange, Inc., Constitution Article XII, Section 1; NASD Regulation, By-Law Article X, Sections 10.1 and 10.2; and Nasdaq By-law Article VII, sections 8.1 and 8.2.

¹² 15 U.S.C. 78s(b). See Securities Exchange Act Release No. 39175 (September 30, 1997), 62 FR 62385 (October 10, 1997); Securities Exchange Act Release No. 39326 (November 14, 1997), 62 FR 62385 (November 21, 1997).

¹³ 15 U.S.C. 78f(b)(5) and 78s(b).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).