

proposed rule change also revises DTC's fee schedule so that the fees align with the services referenced.

Service	Present fee	Proposed fee
For each reclaim instruction processed over the EDS after payable date in respect of withholding tax relief on Netherlands securities as part of the DTC Tax Relief service.	None .....	\$25.00
For each EDS instruction relating to cash-in-lieu of fractional shares, or round-up for additional shares .....	None .....	25.00
For each dividend, interest or principal payment arranged to be paid at a participant's request directly from agent to participant, where such payment is made by a foreign issuer to such participant.	None .....	16.26

DTC believes that the proposed rule change is consistent with section 17A of the Act<sup>3</sup> and the rules thereunder because fees will be more equitably allocated among users of DTC's services and EDS procedures will better describe current EDS functionality.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC perceives no impact on competition by reason of the proposed rule change.

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

Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by DTC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder.<sup>5</sup> At any time within sixty 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.

**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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at DTC. All submissions should refer to the File No. SR-DTC-00-16 and should be submitted by May 23, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Margaret H. McFarland,

Deputy Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44213; File No. SR-Phlx-01-21]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Primary Trading Session Hours for Equities Whose Primary Market Is Not the Exchange**

April 23, 2001.

On March 16, 2001, the Philadelphia Stock Exchange, Inc. (Phlx) filed with the Securities and Exchange Commission ("Commission"), 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, a proposal to amend Phlx Rule 101 to establish the Primary Trading Session hours of securities

whose primary market is not Phlx. On March 28, 2001, the Commission published the proposed rule change in the **Federal Register**.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest.<sup>5</sup>

Many securities are traded on Phlx pursuant to unlisted trading privileges ("UTP"). The proposed rule change would make the hours of the Phlx Primary Trading Session for these securities the same hours that they are traded on their primary markets (except if the primary market is PCX Equities, Inc.). The Commission has previously stated that, absent any regulatory concerns, the decision to change an exchange's trading hours is a matter that falls within the business discretion of the exchange.<sup>6</sup> The Commission does not believe that the proposal raises any regulatory concerns and notes that no comments on the proposal were submitted. In addition, although the proposed rule change will not affect the current equity trading hours on Phlx,

<sup>3</sup> See Securities Exchange Act Release No. 44088 (March 20, 2001), 66 FR 16966.

<sup>4</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>6</sup> See, e.g., Securities Exchange Act Release No. 38766 (June 24, 1997), 62 FR 35244, 35245 (June 30, 1997) (approving proposal by the Pacific Exchange to change the closing time of its equity floor from 1:50 to 1:30 Pacific Time).

<sup>3</sup> 15 U.S.C. 78q-1.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</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.

the hours of Phlx's Primary Trading Session will automatically change whenever the hours of a primary market change, thereby alleviating the need for additional rule changes. Accordingly, the Commission concludes that Phlx's proposal is reasonable and consistent with the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-Phlx-01-21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:<sup>8</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44220; File No. SR-Phlx-2001-45]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending Rule 930

April 25, 2001.

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 April 20, 2001, 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, pursuant to Rule 19b-4 of the Act, proposes to amend Exchange Rule 930, *Lease Agreement*, to add new paragraph (k). Proposed Rule 930(k) relates to the Exchange's ability to allow a member who leases a membership ("lessee") to pay past-due fees owed to the Exchange by the lessor under a lease agreement, on behalf of the lessor. The Exchange also proposes to amend Rule 930 to make certain minor technical amendments to the text of the rule in

order to make the various paragraphs contained in the rule more consistent.

Proposed Rule 930(k) states that the Exchange is a third party beneficiary of the lease agreement, and shall have the right to permit payment by a lessee of past-due fees owed to the Exchange by the lessor. The proposed rule further states that should the lessee pay such past due amounts, the lessee shall provide written notice to the lessor and the Exchange. Once the lessee has elected to make such payments, the lessee may continue to make such payments for a period of up to three months and set off such amounts, with notice to the Exchange and lessor against amounts due the lessor by the lessee. Furthermore, proposed Rule 930(k) states that notwithstanding the terms of the lease agreement, a lessee will not be considered in default of the lease agreement solely by virtue of having elected to make such payments.

In addition, certain minor technical amendments will be made to Rule 930 in order to make the text more consistent. For example, the word "agreement" will be added after the word "lease" in order to make it consistent with other references to "lease agreements." Also, the words "Certificate of Incorporation" are added to make the text more consistent and to clarify that various terms of a lease agreement must be in accordance with the Exchange's Certificate of Incorporation, as well as its by-laws and rules.

#### A. Discussion

##### 1. Authority Under Delaware Law

The Exchange represents that, as a non-stock corporation organized under the Delaware General Corporation law ("DGCL"), it has the authority to adopt proposed Rule 930(k). Article Nineteenth of the Exchange's Certificate of Incorporation expressly empowers the Board of Governors ("Board") of the Exchange:

to determine whether, and under what terms and conditions, memberships may be leased, and to adopt by resolution or to set forth in the Rules of the Board of Governors such rules with respect to lease agreements, lessors and lessees as the board may from time to time determine to be advisable, including, without limitation, rules regulating and setting forth the rights and obligations of lessors and lessees, the required terms of lease agreements, and the fees, dues and other charges required to be paid by lessors and lessees (or either of them) to the Corporation in connection with and for the privilege of leasing memberships.<sup>3</sup>

<sup>3</sup> See Securities Exchange Act Release No. 43987 (February 20, 2001), 66 FR 12582 (February 27,

Thus, the Exchange represents that Rule 930(k) clearly falls within Article Nineteenth's grant of authority.

In addition, Section 141(j) of the DGCL empowers the Board to direct the business and affairs of the Exchange, and the Exchange's by-laws give the Board broad power to adopt rules of the Exchange. 8 Del. C. § 141(j);<sup>4</sup> By-Law Art. IV, § 4-4.

The Exchange represents that numerous provisions of its by-laws and rules already address matters similar to those addressed by proposed Rule 930(k).<sup>5</sup> Moreover, the Exchange's by-laws require lessors and lessees (as members) to pledge to abide by the rules as they may be amended from time time.<sup>6</sup>

Accordingly, the Exchange states that the Board has the authority to adopt Rule 930(k) under the DGCL and the Exchange's Certificate of Incorporation, by-laws and rules.

##### 2. Permissibility Under Pennsylvania Contract Law

The Exchange believes that proposed Rule 930(k) is also permissible as a matter of Pennsylvania contract law. The terms of the Exchange's contractual relationships with both lessors and lessees permit adoption of the rule, and, in any event, the Exchange is already a

2001) (approving adoption of Article Nineteenth, SR-Phlx-99-50).

<sup>4</sup> See also 8 Del. C. § 121(a) (providing that in addition to powers expressly granted by law or the Certificate of Incorporation, the corporation and its directors may exercise "any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation"); Certificate of Incorporation, Article Third (stating, in part, that the Exchange may operate in any lawful act or activity for which corporations may be organized under the DGCL).

<sup>5</sup> See, e.g., By-Law Art. XV, § 15-1(a) (providing that a membership may be leased in accordance with such rules as the Board may adopt); By-Law Art. XII, § 12-8 (authorizing lessor application fee as fixed from time to time by the Board, lessor initiation fee and fee upon transfer of equitable title to a membership); Rule 930 (setting forth required terms of lease agreement and providing, among other things, that the Exchange may dispose of a membership subject to a lease agreement); Rule 960.1 (providing that all members, member organizations and any persons associated with any member are subject to expulsion, suspension, termination as to activities at the Exchange or any other fitting sanction for violation of the Rules of the Exchange); see also Certificate of Incorporation, Article Twentieth (giving Board plenary authority to assess fees, dues and other charges and to impose penalties, including cancellation of a membership and forfeiture of all rights as a lessor or lessee, for nonpayment.)

<sup>6</sup> See Exchange By-Law Art. XII, § 12-9. As a condition of the right to lease their seats, lessors agree "to abide by the [Exchange's] By-laws as they have or shall be from time to time amended, and by all rules and regulations adopted pursuant to the By-Laws." Lessees, as members, likewise make the same commitment.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</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.