

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 or member organization 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 flow 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 a 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,⁴¹ in general, and with Section 6(b)(4)⁴² 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 change 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

Written comments were neither solicited nor received regarding an extension of the monthly credit.⁴³

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

The Exchange has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act⁴⁴ and Rule 19b-4(f)(2) thereunder⁴⁵ because it establishes a due, fee or other charge. Accordingly, the proposal will take effect upon filing with the Commission. 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.

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-00-100, and should be submitted by December 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43584; File No. SR-PHLX-00-52]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Review of Decisions of the Exchange's Business Conduct Committee

November 17, 2000.

On August 18, 2000, the Philadelphia Stock Exchange Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The Exchange proposed amendments to its rules concerning appeals from decisions in disciplinary proceedings. The proposed rule change was published for comment in the **Federal Register** on October 13, 2000.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

I. Description of the Proposal

The Exchange proposes to amend the text of Phlx Rule 960.9 to incorporate specific procedures for appeals from decisions rendered in disciplinary

⁴¹ 15 U.S.C. 78f(b).

⁴² 15 U.S.C. 78f(b)(4).

⁴³ Written comments were received in connection with the initial proposed rule change relating to the credit, which is currently in effect. These comments are described in the previous Commission release noticing the filing and immediate effectiveness of the initial proposal. See Securities Exchange Act Release No. 42791 (May 16, 2000) 65 FR 33606 (May 24, 2000) (SR-Phlx-00-44).

⁴⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴⁵ 17 CFR 240.19b-4(f)(2).

⁴⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 43415 (October 4, 2000), 65 FR 61014 (File No. SR-PHLX-00-52).

proceedings by the Exchange's Business Conduct Committee pursuant to Phlx Rules 960.6(c) and 960.8. Currently, decisions made in disciplinary proceedings are appealed in accordance with Phlx By-Law Article XI. The procedures set forth in the Phlx's By-Laws, however, were not strictly formulated for disciplinary matters, and, as a result, are often silent on unique issues that apply to disciplinary matters. To ensure that appeals in disciplinary proceedings are accomplished in a consistent and orderly manner, the Exchange expanded the procedures in Phlx Rule 960.9 into four categories: (a) Petition by Respondent; (b) Conduct of Review; (c) Review on Motion by Board of Governors; and (d) Petition by Enforcement Staff.

The proposed amendment to paragraph (a) of Phlx Rule 960.9 is intended to provide time guidelines for requesting an appeal. The Respondent's petition for appeal must be in writing and filed with the Secretary of the Exchange within 10 days after service of notice and a copy of the decision of the Business Conduct Committee. The petition must specify the findings and conclusions that are the subject of the petition, along with the reasons the Respondent is petitioning for review. Exchange Enforcement Staff will have 15 days to file a written response. The Respondent may then file a reply within 15 days after service of the Enforcement Staff's response.

Paragraph (b) of the proposed rule, "Conduct of Review," provides that the review shall be conducted by the Exchange's Board of Governors ("Board"), or an Advisory Committee made up of three Governors, with at least one being a non-industry Governor appointed by the Chairman of the Board. No Governor who was a member of the hearing panel below may participate in the hearing on review. Unless the Board of Governors or Advisory Committee hearing the review allows oral argument, the review will be based solely on the record below. If an Advisory Committee hears the review, it must submit a written report to the Board.

Sub-paragraphs (b)(ii) and (iii) of the proposed rule set forth the standard of review for the Board or Advisory Committee. The decision of the Business Conduct Committee can be affirmed, reversed or modified, in whole or in part. A modification may include an increase or decrease of the sanction. However, neither the Board nor the Advisory Committee may reverse or modify the findings, conclusions, and decision of the Business Conduct Committee if the factual conclusions in

the decision are supported by substantial evidence, and such decision is not arbitrary, capricious or an abuse of discretion.

In paragraph (c), the proposed rule change includes procedures for a review by the Board of Governors on its own initiative. The review would follow the procedure set forth in paragraph (b) of the proposed rule. Together, these provisions are intended to establish a standard and process of review.

Finally, paragraph (d) of the proposed rule sets forth the procedures by which the Exchange's Enforcement staff may petition the Board for permission to appeal. The petition must specify the findings and conclusions that are the subject of the petition, along with the reasons the staff is petitioning for review. If the Board grants permission, the Exchange's Enforcement staff must serve a copy of the petition on the Respondent within 5 days. The respondent then has 15 days to file a written response with the Board, and the staff would have 15 days to file a reply.⁴

II. 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 Sections 6(b)(6) and 6(b)(7).⁵ Section 6(b)(6) requires that members and persons associated with members be appropriately disciplined for violation of any provision of the Act, the rules and regulations thereunder, or the rules of the Exchange. Section 6(b)(7) of the Act requires, among other things, that the rules of the Exchange provide a fair procedure for the disciplining of members and persons associated with the members.

Currently, the Phlx does not have detailed procedures for appeals from decisions in summary and regular disciplinary proceedings. The Commission believes that the proposed procedures in Phlx Rule 960.9 could provide for a more appropriate and fair disciplinary procedure. For example, paragraphs (b) and (c) of revised Rule 960.9 set forth a standard of review the Board of Governors or the Advisory Committee must follow in deciding whether to affirm, reverse or modify the

decision of the Business Conduct Committee. The Commission believes that explicit standards will help ensure that decisions in disciplinary proceedings are not rendered arbitrarily.

The Commission also believes that the clear time guidelines set forth in paragraphs (a), (c), and (d) enhance the fairness of the disciplinary procedure. Currently, Phlx Rule 960.9 only dictates the time a respondent has to file an appeal. Under the proposal, the expanded procedures in Rule 960.0 layout the timetable for responses and replies to be filed. Thus, respondents and the Exchange's Enforcement staff will not be subjected to unnecessary delays. The Commission believes this is a more fair procedure because it brings a measure of finality to disciplinary proceedings.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-PHLX-00-52) is approved.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43585; File No. SR-Phlx-00-98]

Self-Regulatory Organizations; Notice of Filing of Proposed By-Law Change by the Philadelphia Stock Exchange, Inc., Relating to Allocation, Evaluation and Securities Committee

November 17, 2000.

Pursuant to Section 10(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on November 7, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed by-law 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 by-law change from interested persons.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 U.S.C. 240.19b-4.

⁴ Review of appeals initiated by the Exchange's Enforcement staff will be conducted in accordance with the procedure set forth in paragraph (b) of the proposed rule. Telephone conversation between Charles Falgie, Director of Enforcement, Phlx, and Anitra Cassas, Special Counsel, Division of Market Regulation, Commission, on October 3, 2000.

⁵ 15 U.S.C. 78f(b)(6) and (b)(7).