

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 Association. All submissions should refer to the File No. SR-NASD-00-16 and should be submitted by November 3, 2000.

V. 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,¹⁷ that the proposed rule change, SR-NASD-00-16, as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43415; File No. SR-PHLX-00-52]

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

October 4, 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 August 18, 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. 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 the text of PHLX Rule 960.9 to incorporate procedures for the hearing of appeals in disciplinary matters. Specifically, the

procedures would be divided 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.

First, with respect to petitions by a Respondent, the proposed rule provides that a 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, and that it specify the findings and conclusions that are the subject of the petition along with the reasons for the review thereof. Exchange Enforcement Staff will then have 15 days to file a written response, with the Respondent receiving 15 days after service of the Enforcement Staff's response to file a response thereto.

Second, paragraph (b) of the proposed rule, "Conduct of Review," provides that the review is to 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. The review shall be based solely on the record below, unless the Board of Governors or Advisory Committee hearing the review allows oral argument after receiving a written request for one. If an Advisory committee hears the review, it is to submit a written report to the Board.

The proposed rule sets forth guidelines that the Board or an Advisory committee must follow in making the decision on review. 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. The findings, conclusions, and decision of the Business Conduct Committee may not be reversed, or modified, in whole or in part, if the factual conclusions in the decision are supported by substantial evidence, and such decision is not arbitrary, capricious or an abuse of discretion. The Board must serve its written decision on the petitioner.

Paragraph (c) of the proposed rule includes procedures for a review by the Board of Governors on its own initiative. The review would follow the previously described procedure.

Finally, paragraph (d) of the proposed rule sets forth procedures by which the Exchange's Enforcement Staff, within 10 days after service of notice and a copy of the decision of the Business Conduct Committee, may petition the Board for permission to appeal, by presenting to

the Board a petition specifying the findings and conclusions that are subject of the petition, along with the reasons the staff is petitioning for review. Should the Board grant permission, Exchange Enforcement Staff shall serve a copy of the petition on the Respondent within 5 days. Respondent then has 15 days to file a written response with the Board, and Exchange Enforcement Staff then has 15 days to file a reply.

The proposed rule language follows. Additions are italicized; deletions are bracketed.

Rule 960.9. Review

(a) *Petition by Respondent.* A Respondent shall have 10 days after service of notice and a copy of a decision made pursuant to Rules 960.6(c) and 960.8 to appeal such decision to the Board of Governors in accordance with By-Law Article XI, Section [11-1] 11-3. *Such petition shall be in writing and shall specify the findings and conclusions of the Business Conduct Committee which is the subject of the petition, together with the reasons that Respondent petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. Within 15 days after a Respondent's petition for review has been filed with the Secretary of the Exchange pursuant By-Law Article XI, Section 11-1(a), Enforcement staff may submit to the Secretary a written response to the petition. A copy of the response must be served upon the Respondent. A Respondent has 15 days from the service of the response to file a reply with the Secretary and the Enforcement staff.*

(b) *Conduct of Review.*

(i) *The review shall be conducted by the Board of Governors or an Advisory Committee thereof pursuant to By-Law Article XI, Section 11-3. If an Advisory Committee is appointed to conduct the review, it shall be composed pursuant to By-Law Article XI, Section 11-2. Any Board member who participated in a matter before the Business Conduct Committee may not participate in any review of that matter by the Board of Governors or an Advisory Committee. Unless the Board of Governors or the Advisory Committee shall decide to hear oral argument, such review shall be based solely upon the record and the written exceptions filed by the parties. The review shall be heard as soon as practicable.*

(ii) *Should the Board of Governors conduct the review, then based upon such review, the Board of Governors by a majority vote of its members, shall decide to affirm, reverse or modify, in whole or in part the decision of the Business Conduct Committee. Such modification may include any increase or decrease of the sanction. The Board of Governors may not reverse, or modify, in whole or in part, 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. The decision of the Board shall be in writing,*

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

shall be promptly served on the Respondent in accordance with Rule 960.11, and shall be final and conclusive subject to Rule 960.9(c) and (d), as well as the provisions of the Securities Exchange Act of 1934.

(iii) Should the review be conducted by an Advisory Committee, the Advisory Committee shall submit a written report to the Board of Governors. In such report, the Advisory Committee shall recommend to affirm, reverse or modify, in whole or in part, the decision of the Business Conduct Committee. Such modification may include an increase or decrease of the sanction. The Advisory Committee may not reverse, or modify, in whole or in part, the findings, conclusions or 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. The Board of Governors by a majority vote of its members, shall decide to affirm, reject or modify, in whole or in part the recommendations of the Advisory Committee. Such modification may include an increase or decrease of the sanction. The Board of Governors may not reverse, or modify, in whole or in part, the findings, conclusions and decision of the Advisory 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. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 960.11, and shall be final and conclusive subject to Rule 960.9(c) and (d), as well as to the provisions of the Securities Exchange Act of 1934.

(c) Review on Motion of Board Governors. The Board of Governors may on its own initiative order review of a decision made pursuant to rules 960.6(c) or 960.8 within 20 days after notice of the decision has been served on the Respondent. Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule. Should the Board of Governors vote to disapprove this modification or reversal, the Board shall make its own findings and issue a final decision of the Exchange. An Advisory Committee appointed by the Board of Governors may conduct such a review pursuant to By-Law Article XI, Section 11-3 and in accordance with the provisions of Rule 960.9.

(d) Petition by Enforcement Staff. An appeal of a decision made pursuant to Rules 960.6(c) or 960.8 may also be taken by the Enforcement staff by petitioning the Board of Governors, within 10 days after service of notice and a copy of a decision, for permission to proceed with such appeal in accordance with By-Law Article XI, Section 11-3. Such petition shall be in writing and shall specify the findings and conclusions of the Business Conduct Committee which are the subject of the petition, together with the reasons that Enforcement staff petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. If permission to appeal is granted, staff shall serve a copy of the petition on the Respondent within five days of permission to

appeal being granted. Within 15 days Respondent may submit to the Board of Governors a written response to the petition. A copy of the response must be served upon the Exchange's Enforcement staff, who then has 15 days from the service of the response to file a reply with the Board of Governors and the Respondent.

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 test 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 Exchange proposes to adopt specific procedures for the hearing of appeals of decisions rendered by the Exchange's Business Conduct Committee pursuant to Phlx Rules 960.6(c) and 960.8 to ensure that appeals of disciplinary matters are accomplished in a consistent and orderly fashion.

(a) Background

Currently, Phlx Rule 960.9 states that a Respondent has 10 days after service of notice and a copy of the decision of the Business Conduct Committee within which to request an appeal to the Exchange Board of Governors pursuant to Exchange By-law Article XI, Section 11-1. Exchange By-law Article XI, Section 11-1 states that an appeal to the Board of Governors may be taken from a decision of a Standing Committee by a member or member organization interested therein by filing a written notice of appeal with the Secretary of the Exchange within 10 days after the decision has been rendered. Section 11-2 states that an appeal to the Exchange Board of Governors from a decision of a Standing Committee shall be heard by an Advisory Committee of three Governors, with at least one being a non-industry Governor appointed by the Chairman of the Board, and that the Advisory Committee shall examine the record on appeal and give an advisory opinion to the Board of Governors. Section 11-3 specifically addresses

appeals from decisions of the Business Conduct Committee. Sub-section (a) of Section 11-3 reiterates the Respondent's right to appeal as previously stated in Section 11-1 (a); however, it also allows for Exchange staff to petition the Board of Governors within 10 days after the decision, for permission to appeal. Sub-section (b) of Section 11-3 dictates that the appeal shall be based on the written record; however, it gives the parties the right to request oral argument before the Board of Governors or the Advisory Committee.

(b) Proposal

The proposed revisions to Phlx Rule 960.9 have been developed to apply to disciplinary matters, which have unique issues. The procedures currently encompassed in Exchange by-laws were not formulated strictly for disciplinary matters, and, as a result, were often silent to those unique issues. The proposed revisions to Phlx Rule 960.9 set forth detailed procedures for hearing of an appeal from a Business Conduct Committee decision.

The proposed amendment to subparagraph (a) of Phlx Rule 960.9 states that 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 after a Respondent files its petition to file a written response. The Respondent may file a reply within 15 days after service of the Enforcement Staff's response. These provisions are intended to provide time guidelines for requesting an appeal.

Sub-paragraph (b)(i) of the proposed rule provides that the review shall be conducted by the Exchange's Board of Governors, 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. This is intended to establish who hears the appeal.

Unless the Board of Governors or Advisory Committee hearing the review allows oral argument, the review shall be based solely on the record below. If an Advisory Committee hears the review, it shall submit a written report to the Board. Sub-paragraphs (b)(ii) and (iii) of the proposed rule set forth the guidelines that the Board or an Advisory

Committee must follow in making the decision on review. The Board in its decision, or the Advisory Committee in its report to the Board, shall affirm, reverse or modify, in whole or in part, the decision of the Business Conduct Committee. A modification may include an increase or decrease of the sanction. However, neither the Board nor the Advisory Committee reverse, or modify, in whole or in part, 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. A written decision of the Board must be served on the petitioner.

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

Finally, sub-paragraph (d) of the proposed rule sets forth the procedures by which the Exchange's Enforcement staff, within 10 days after service of notice and a copy of the decision of the Business Conduct Committee, may petition the Board for permission to appeal. The petition must specify the findings and conclusions that are subject to the petition, along with the reasons for review thereof. If permission is granted, the staff must serve a copy of the petition on the Respondent within 5 days. Respondent then has 15 days to file a written response with the Board, and the staff would have 15 days of service of the Respondent's initial response to file a reply. This paragraph is intended to expressly cover staff appeals.³

The Exchange believes that the proposed revisions, which have been developed specifically for issues unique to disciplinary matters, should facilitate appeals being processed in a systematical fashion. Furthermore, the Exchange believes that the proposed rule should promote an objective, consistent appeals procedure for both members of the Exchange and for the Exchange's Enforcement Staff. The provisions should also prevent undue delay, and any inconvenience that affects the parties as a direct result of

such a delay. Finally, the proposed revisions will provide the Board of the Advisory Committee with a precise procedure to apply to such a hearing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,⁴ in general, and Sections 6(b)(6) and 6(b)(7),⁵ in particular, in that it is designed to ensure that Exchange members and persons associated with members are appropriately disciplined for violations of the provisions of the Act, the rules and regulations thereunder, or the rules of the Exchange, as well as providing a fair procedure for the disciplining of Exchange members and persons associated with members.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 35 days of the 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 period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the 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 proposal 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 PHLX. All submissions should refer to File No. SR-PHLX-00-52 and should be submitted by November 3, 2000.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-26280 Filed 10-12-00; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before December 12, 2000.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Delorice P. Ford, Associate Administrator/BD, Office of Business Development, Office of Government Contracting and Business Development, Small Business Administration, 409 3rd Street, SW., Suite 8000.

FOR FURTHER INFORMATION CONTACT: Delorice P. Ford, Associate Administrator/BD, 202-205-5852 or Curtis B. Rich, Management Analyst, (202) 205-7030.

SUPPLEMENTARY INFORMATION:
Title: Small Disadvantaged Business(SDB) Recertification Application.
Form No.: 2179

³ 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, Attorney, Division of Market Regulation, Commission, on October 3, 2000.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b) and 15 U.S.C. 78f(b)(7).

⁶ 17 CFR 200.30-3(a)(12).