

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45996; File No. SR-Phlx-2002-13]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Security Required for and Termination of Equity Trading Permits

May 29, 2002.

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 March 1, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 on April 2, 2002.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend paragraph (i) of Exchange Rule 23, *Equity Trading Permits* ("ETPs"), to provide that ETP organizations, which are also member organizations holding equitable title to a membership, would not be required to provide the required security and to add new subsection (i)(iv) of Exchange Rule 23 to provide that the proceeds of any transfer of a

membership by a member organization may be applied by the Exchange to satisfy any claims of the Exchange, Stock Clearing Corporation of Philadelphia ("SCCP"), or other member firms of the Exchange as described in Exchange By-Law 15-3 against the member organization's ETP holders. The Exchange also proposes to amend Exchange Rule 50, *Late Charge*, in order to allow the Exchange to terminate an ETP 14 days after the ETP holder is suspended. The text of the proposed rule change appears below. New text is in *italics*; deletions are in [brackets].

#### Rule 23

Equity Trading Permits.

(a)-(h) No Change.

(i) Security For Exchange Fees and Other Claims.

(i) Each ETP organization (*except any ETP organization which is also a member organization holding equitable title to a membership, legal title to which is held by an associated person of such member organization*) shall be required to provide security to the Exchange for the payment of any claims owed to the Exchange, *to Stock Clearing Corporation of Philadelphia, and to other member firms of the Exchange*, upon termination of any ETP issued to an individual affiliated with the ETP organization, as though such security were the proceeds from the transfer of a membership. This security may consist of:

(A) a deposit with the Exchange in the amount of \$50,000 to be held, together with all other such deposits made pursuant to this rule, in a segregated account, the proceeds of which may be applied by the Exchange upon termination of any ETP issued to an individual affiliated with such ETP organization in the same manner as proceeds of membership transfers under By-Law 15-3, and which may be invested by the Exchange in United States government obligations or any other investments which provide safety and liquidity of the principal invested, interest or income on which deposit shall be paid periodically by the Exchange to such ETP organization;

(B) an acceptable letter of credit from a financial institution acceptable to the Exchange, in the amount of \$50,000, proceeds of which may be applied by the Exchange upon termination of any ETP issued to an individual affiliated with such ETP organization in the same manner as proceeds of membership transfers under By-Law 15-3; or;

(C) an acceptable guaranty by a financial institution acceptable to the Exchange guaranteeing the payment by

the ETP organization, upon termination of any ETP issued to any individual affiliated with such organization, of any claims listed in By-Law 15-3 up to \$50,000.

(ii) The security required to be provided pursuant to this rule shall not be calculated based upon the number of ETPs issued to affiliates of the ETP organization, but shall be the same amount regardless of the number of such ETPs issued to its affiliates. At such time as no ETP holders remain associated with the ETP organization, the proceeds of any remaining security may be applied by the Exchange in the same manner as proceeds of membership transfers under By-Law 15-3, and upon execution by the ETP holder and ETP organization of releases satisfactory to the Board of Governors.

(iii) The obligation to provide security pursuant to this rule shall not apply to ETP organizations which have been in good standing at the Exchange as member organizations, participant organizations, or ETP organizations for the previous year. Any security provided pursuant to this Rule 23(i) shall be returned at such time as the ETP organization shall have been in good standing as either a member organization, participant organization, or an ETP organization for one year.

(iv) *The proceeds of any transfer of a membership by a member organization may be applied by the Exchange to satisfy any claims of the Exchange, Stock Clearing Corporation of Philadelphia, or other member firms of the Exchange as described in By-Law 15-3 against the member organization's ETP holders.*

#### Rule 50. Late Charge

There shall be imposed upon any member, member organization, participant or participant organization or an employee thereof using the facilities or services of the Exchange, or enjoying any of the privileges therein, a late charge for dues, foreign currency options users' fees, fees, other charges, fines, and/or other monetary sanctions or other monies due and owed the Exchange and not paid within thirty (30) days after date of original invoice. The late charge is set at a rate of one and one half percent (1.5%) simple interest for each thirty-day period or fraction thereof, calculated on a daily basis, during which accounts payable to the Exchange remain outstanding. An account is not subject to a late charge until the unpaid balance remains outstanding at least thirty-one (31) days. The Finance Committee or its designee may waive the amount of the late charge, or a portion thereof, if the

<sup>24</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.

<sup>3</sup> See letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx, to Christopher Solgan, Law Clerk, Division of Market Regulation ("Division"), Commission, dated April 2, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the propose rule text to reflect amendments made under SR-Phlx-2002-19 filed pursuant to Section 19(b)(3)(a)(ii) of the Act and Rule 19b-4(f)(2) thereunder. In addition, the Exchange requested that, rather than being filed pursuant to Section 19(b)(3)(A)(ii) of the Act, under which it was originally filed, that the proposed rule change now be filed pursuant to Section 19(b)(3)(iii) of the Act and Rule 19b-4(b)(6) thereunder.

amount falls within guidelines established by the Board of Governors. If any member, or member organization, participant or participant organization or an employee thereof shall fail to pay such fines and/or other monetary sanctions, or other monies due and owed the Exchange, including late charges, within fifty (50) days from the date of the original invoice, the Controller shall notify the Finance Committee, which shall take such action as it deems appropriate. Should such amounts due exceed \$10,000, the Finance Committee shall refer the matter to the Board of Governors which shall take such action as it or its designee deems appropriate, including, after due notice, suspending the member, member organization, participant or participant organization or employee thereof until payment of the entire outstanding account balance is made in full to the Exchange of such member's or member organization's entire outstanding account balance of all dues, fees, fines, or other charges imposed by the Exchange. *If all amounts due and owing to the Exchange, Stock Clearing Corporation of Philadelphia ("SCCP") and other member firms of the Exchange with respect to an equity trading permit ("ETP") are not paid to the Exchange, SCCP or to the relevant member firm of the Exchange, as the case may be, within 14 days following suspension of the ETP, the Board of Governors or its designee may terminate the ETP.*

## 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 III 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 purpose of the proposed rule change is to amend paragraph (i) of Exchange Rule 23, *Equity Trading Permits*, and to amend Exchange Rule 50, *Late Charge*, in order to make

changes to conform to the Exchange's current business plan respecting ETPs.<sup>4</sup>

#### Exchange Rule 23(i)

Exchange Rule 23(i) requires ETP organizations to provide security for the payment of certain claims owed by ETP holders upon termination of any ETP issued to an individual affiliated with the ETP organization, as though such security were proceeds from the transfer of a membership. The security is in the amount of \$50,000 and may take the form of a letter of credit, a guaranty by an acceptable financial institution, or a cash deposit. Exchange Rule 23(i)(i)(A) and (B) provide that the proceeds of the cash deposit or letter of credit shall be applied in the same manner as proceeds of membership transfers under Exchange By-Law 15-3. Likewise, Exchange Rule 23(i)(i)(C) provides that the guaranty must be made by a financial institution acceptable to the Exchange and must guaranty payment by the ETP organization of any claims listed in Exchange By-Law 15-3 up to \$50,000.<sup>5</sup> The security requirement of Exchange Rule 23(i) does not apply to ETP organizations which have been in good standing at the Exchange as member organizations, participant organizations or ETP organizations for the previous year.<sup>6</sup>

The Exchange states that the proposed amendment to Exchange Rule 23(i)(i) would narrow the applicability of the security requirement. ETP organizations, which are also member organizations holding equitable title to a membership (as opposed to conducting

Exchange business solely with ETPs), legal title to which is held by an associated person of such member organization, would not be required to provide the security. Additionally, proposed subsection (i)(iv) of Exchange Rule 23 would provide that the proceeds of any transfer of a membership by a member organization may be applied by the Exchange to satisfy any claims of the Exchange, SCCP or other member firms of the Exchange as described in Exchange By-Law 15-3 against the member organization's ETP holders.

Finally, the Exchange proposes to make a clarifying change to the first sentence of subparagraph (i) of Exchange Rule 23(i) so as to conform that sentence to sections (A), (B) and (C) of Exchange Rule 23(i)(i). Specifically, the proposed amendments to the first sentence of Exchange Rule 23(i) would clarify that the security is intended to cover payment of any claims owed to SCCP and to other member firms of the Exchange, in addition to payment of any claims owed to the Exchange itself.

#### Exchange Rule 50

The purpose of the proposed amendment to Exchange Rule 50 is to allow the Board of Governors or its designee to terminate an ETP 14 days after the ETP holder is suspended. Pursuant to Exchange Rule 23(a), the Exchange has authority to issue up to 75 ETPs outstanding from time to time. Exchange Rule 23(h) provides that an ETP holder may be suspended or expelled on the same basis as a member. The Exchange believes that it is necessary for it to have the ability to terminate an ETP that has been suspended, so that the Exchange may re-issue the ETP to another applicant. The Exchange believes that this is particularly important because the Exchange is limited to having only 75 ETPs outstanding from time to time pursuant to Exchange Rule 23(a). According to the Exchange, this proposed amendment to Exchange Rule 50 is intended to provide for this termination right.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

<sup>4</sup> Exchange Rule 23, which provides for ETPs, was approved by the Commission on January 9, 2002. See Securities Exchange Act Release No. 45254 (January 9, 2002), 67 FR 2720 (January 18, 2002) (approving SR-Phlx-00-02 and SR-Phlx-00-03).

<sup>5</sup> Exchange By-Law 15-3, *Disposition of Proceeds of Sale of Membership*, provides that upon certain transfers of a membership, the proceeds thereof shall be applied to certain amounts owed to the Exchange, to SCCP or Options Clearing Corporation, and to other members or member firms of the Exchange.

<sup>6</sup> For purposes of Rule 23(i)(iii), a member organization, participant organization or ETP organization will be considered to have been in good standing for the past year if (1) it has been a member organization, participant organization or ETP organization for the past year; (2) it is not currently suspended and has not been suspended at any time during the previous year; and (3) it is not currently in arrears respecting Exchange dues, fees, charges, fines or other monies due and owed to the Exchange, has not been delinquent in the payment of any such amounts more than three times in the past year, and has not been more than 30 days in arrears with respect to such amounts at any time during the past year. Telephone conversation between Carla Behnfeldt, Director, Legal Department, New Product Development Group, Phlx, Florence Harmon, Senior Special Counsel, Division, Commission and Christopher Solgan, Law Clerk, Division, Commission on May 24, 2002.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers for the reasons set forth below.

Specifically, the Exchange believes that the proposed elimination of the security requirement for certain member organizations under Exchange Rule 23(i)(i) should enhance the attractiveness of ETPs to those organizations. The language proposed to be added to Exchange Rule 23(i) in proposed subsection (iv) would provide, with respect to such member organizations, that the proceeds of any transfer of a membership by a member organization may be applied by the Exchange to satisfy any claims of the Exchange, SCCP or other member firms of the Exchange as described in Exchange By-Law 15-3 against the member organization's ETP holders. In view of the availability of membership proceeds, the Exchange believes that it is fair and appropriate not to require such member organizations to provide the same security under Exchange Rule 23(i) as required by ETP organizations without a membership subject to Exchange By-Law 15-3.

In addition, the Exchange believes that the proposed amendment to Exchange Rule 50 to enable the Exchange to terminate an ETP 14 days following suspension, and thus allowing it to reissue the ETP to another applicant who may use it to trade would enhance liquidity on the Exchange. By permitting the Exchange to terminate ETPs 14 days following suspension, the Exchange believes that this amendment should enable it to offer more competitive markets than would be possible if ETPs were permitted to remain in a state of suspension, without trading activity, for a lengthier period of time.

#### *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*

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4<sup>10</sup> thereunder because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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.<sup>11</sup> Lastly, the Commission notes that the Exchange has requested that the Commission waive the 30-day operative date.<sup>12</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2002-13 and should be submitted by June 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **DEPARTMENT OF STATE**

### **[Public Notice 4033]**

### **Culturally Significant Objects Imported for Exhibition Determinations: "Connecting Museums"**

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, "Connecting Museums," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Guggenheim Museum, New York, New York, from on or about June 15, 2002, to on or about November 10, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619-5997, and the address is United States Department of State, SA-44, Room 700, 301 4th Street, SW., Washington, DC 20547-0001.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on April 2, 2002, the date the Exchange filed Amendment No. 2.

<sup>12</sup> See Amendment No. 1, *supra* note 3. Because the Commission staff sought clarifications, which the Phlx gave on May 24, 2002, *see supra* note 6, the Commission notes that it has been more than 30 days from when the Exchange submitted this filing and its publication in the **Federal Register**. Thus, the 30-day operative date has passed.

<sup>13</sup> 17 CFR 200.30-3(a)(12).