

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46755; File No. SR-Phlx-2002-46]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Amending Various Phlx By-Laws and Rules to Remove References to the Secretary and Office of the Secretary to Properly Reflect Functions Performed by the Membership Services Department and its Director, the Director of the Examinations Department and the Floor Procedure Committee

October 31, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 2, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to 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. On October 28, 2002, the Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.<sup>4</sup>

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

The Phlx proposes to amend Phlx By-Law Article V, Section 5-7; Article XII, Sections 12-1(f)(1), (f)(2), (f)(4), (f)(5), (f)(8); 12-4(a), (d); Article XV, Sections 15-1, 15-11, 15-12; Article XVII, Sections 17-1, 17-3; and Phlx Rules 21, 404, 600, 601, 602, 949, and 1024 by removing references to Secretary and Office of the Secretary to properly reflect functions performed by the Phlx Membership Services Department and its Director, the Director of the

Examinations Department and the Floor Procedure Committee.

The text of the proposed rule change, as amended, is available at the Office of the Secretary, the Phlx, and at the Commission.

#### 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 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 proposes to substitute references to Office of the Secretary and the Secretary with references to the Membership Services Department and its Director, primarily, in the various Exchange By-Law Article sections and Exchange rules relating to the membership processing performed at the Phlx. The proposed amendments recognize the functional split of responsibilities and functions now performed by the Phlx's Membership Services Department as opposed to the Phlx's Office of the Secretary. The Phlx's Membership Services Department, among other things, processes applications for membership, maintains mail and membership lists, conducts the market for memberships and foreign currency options participations, registers inactive nominees as well as compiles and issues the Exchange's Bulletin.

Approximately a year ago, the Membership Services Department was created by the Phlx to align membership, foreign currency options participation, inactive nominee and approved lessor processing and functions in a single, dedicated department. Over time, the role of the Phlx's Office of the Secretary respecting these matters has been transferred. The Phlx's Office of the Secretary now relies on the Phlx's Membership Services Department to compile and keep current the membership, approved lessor, foreign currency options participant and inactive nominee lists. Thus, the Phlx represents that the purpose of the

changes to Phlx Bylaw Article V, Section 5-7, and Phlx Rules 600 and 601 are to reflect this situation. In the course of performing the processing functions, the Phlx's Membership Services Department compiles and issues the Exchange's Bulletin. This function is codified and the Phlx is eliminating the reference to the Secretary's Weekly Bulletin in Phlx By-Law Article XII, Section 12-4(d), Article XV, Section 15-1, as well as in Phlx Rule 949. The proposed changes to the following membership provisions also reflect a transfer of such functions: Phlx By-Law Article XII, Sections 12-1(f) and 12-4(a), Article XV, Sections 15-11 and 15-12, as well as Phlx Rules 21, 602, 949 and 1024.

Additionally, with respect to the proposed amendment to Phlx By-Law Article XVII Section 17-3, Investigation of Insolvency, the reference to the Secretary is being substituted by the Director, Membership Services Department and the Director of the Examinations Department because the Phlx believes that they are the appropriate staff officials to contact respecting an investigation for insolvency of a member or member organization.

Similarly, the amendment to Phlx Rule 404 deletes the reference to the Secretary as the Exchange official referenced to officially close an Exchange contract in securities that has not been fulfilled according to its terms and substitutes the Floor Procedure Committee to perform that function because the Phlx believes that they are the appropriate entity to address the matter under the Exchange rules.<sup>5</sup>

The Phlx believes that the proposed amendments are administrative in function and were reviewed by various Phlx Standing Committees, the Phlx Board and the membership without comment.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is

<sup>5</sup> The Phlx represents that the Floor Procedure Committee is the appropriate entity to address this matter because, currently, under Exchange Rule 124, trading disputes occurring on or related to the trading floor, if not settled by an agreement between the members interested, will be settled by a vote of the members knowing of the transaction in question; and if the dispute is still not settled, then it will be settled by a Floor Official. Exchange Rule 124 also provides that Floor Official rulings are reviewable by the Exchange's Floor Procedure Committee. The Phlx also represents that this proposed amendment to current Exchange Rule 404 will not affect appeal or arbitration rights. Telephone conversation between Murray L. Ross, Vice President and Secretary, Phlx, and Sapna C. Patel, Attorney, Division, Commission, on October 31, 2002.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Murray L. Ross, Vice President and Secretary, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 25, 2002 ("Amendment No. 1"). In Amendment No. 1, the Phlx made technical corrections to its proposal and replaced the filing in its entirety.

<sup>4</sup> For purposes of calculating the effective date and the 60-day abrogation period, the Commission considers the period to commence on October 28, 2002, the date that the Exchange filed Amendment No. 1.

consistent with section 6(b) of the Act<sup>6</sup> in general, and section 6(b)(5) of the Act<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest by promoting the efficient processing and maintenance of the Exchange's membership, approved lessor, foreign currency options participation and inactive nominee lists and files.

#### *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 neither solicited nor received written comments.

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

The proposed rule change, as amended, has become effective on October 28, 2002, the date of filing of Amendment No. 1, pursuant to section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and subparagraph (f)(3) of Rule 19b-4 thereunder<sup>9</sup> because it is concerned solely with the administration of the Exchange. 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.

### **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 in the Commission's Public Reference Section. 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-2002-46 and should be submitted by November 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46758; File No. SR-Phlx-2002-11]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Proposing to Amend Phlx Rule 201A(b), Alternate Specialist Assignment**

October 31, 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 February 11, 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, II, and III below, which Items have been prepared by Phlx. The Exchange filed Amendment No. 1 with the Commission on September 10, 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 Phlx proposes to amend Phlx Rule 201A(b), Alternate Specialist Assignment, to delete restrictions on

members, member organizations and persons affiliated with member organizations from acting as an alternate specialist while that member, member organization or person affiliated with member organization is either a specialist in the options overlying the equity issue or a Registered Options Trader ("ROT") with an assignment in the overlying options. The text of the proposed rule change is set forth below. Deleted text is in brackets.

Rule 201A (a) No change.

(b) *Assignment.* The Allocation, Evaluation and Securities Committee may assign one or more alternate specialists in a particular equity issue and may assign an alternate specialist to one or more equity issues after consultation with the Floor Procedure Committee. [No alternate specialist shall be assigned in an equity issue in which the alternate specialist, or any person associated with the alternate specialist or the member organization with which the alternate specialist is affiliated, is either a specialist in the options overlying that equity issue, or a Registered Options Trader with an assignment in the overlying options].

(c) No change.

### **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 IV below. Phlx 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 delete restrictions on assignment of members and member organizations as alternate specialists if the member, member organization or persons affiliated with the member is the options specialist or an assigned ROT in the options overlying the equity issue. The Phlx does not have any similar restrictions on registered equity specialists (*i.e.*, primary specialists), their members or affiliated persons of such member organizations, nor is there a Commission rule on point. The Phlx believes that in an era of intense

<sup>6</sup> U.S.C. 78f(b).

<sup>7</sup> U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(3).

<sup>10</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> On September 10, 2002, the Exchange filed a Form 19b-4, which replaced the original filing in its entirety ("Amendment No. 1"). In Amendment No. 1, the Exchange enhanced the purpose of the proposed rule change.