

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51419; File No. SR-Phlx-2005-11)

March 23, 2005

**Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to an Amendment to its By-laws to Replace an On-Floor Equity Governor Position with an On-Floor Philadelphia Board of Trade Governor Position**

I. Introduction

On January 31, 2005, the Philadelphia Stock Exchange, Inc. (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), 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> a proposed rule change to amend its By-Laws to replace an On-Floor Equity Governor position on the Exchange’s Board of Governors with an On-Floor Philadelphia Board of Trade, Inc. (“PBOT”) Governor position. On March 17, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change was published in the Federal Register on February 9, 2005.<sup>4</sup> No comment letters were received on the proposal. This order approves the proposed rule change, as amended, and grants accelerated approval to Amendment No. 1.

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

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

<sup>3</sup> In Amendment No. 1, the Exchange revised the statutory basis section of the proposed rule change.

<sup>4</sup> See Securities Exchange Act Release No. 51127 (February 2, 2005), 70 FR 6918.

## II. Description of the Proposal

Under the proposal, Article IV, Section 4-1 of the Phlx's By-laws would be amended to change the composition of the Phlx's Board of Governors. Currently, two of the On-Floor Governors must be industry Governors who are members primarily engaged in business on the Exchange's Equity Floor or general partners, executive officers (vice president and above) or members associated with member organizations primarily engaged in business on the Exchange's Equity Floor. The Exchange proposes to replace one of these On-Floor Equity Governor positions with an On-Floor PBOT Governor position. Any On-Floor PBOT Governor must be a member of PBOT, which is a subsidiary of the Exchange.

In addition, Article III, Sections 3-6 of the Phlx's By-laws would be amended to provide that recommendations for the PBOT Governor candidate would be submitted to the Exchange's Nominating and Elections Committee by the PBOT Board of Governors.

The Exchange believes that the revised Board of Governors composition, with a PBOT representative Governor, more accurately represents the strategic ownership and on-going business interests of the Exchange, while still affording appropriate proportional representation of On-Floor Governors - with three On-Floor Equity Options Governors, one On-Floor Equity Governor and one On-Floor PBOT Governor.

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

a national securities exchange<sup>5</sup> and, in particular, the requirements of Section 6 of the Act.<sup>6</sup> Specifically, the Commission finds that the proposal to convert an On-Floor Equity Governor position into an On-Floor PBOT Governor position is consistent with Section 6(b)(3) of the Act,<sup>7</sup> which, among other things, requires that an exchange assure a fair representation of members in the selection of its directors and administration of its affairs.<sup>8</sup>

The Phlx's Board of Governors is currently composed of the Chairman of the Board of Governors and 21 other Governors. Five Governors (i.e., the On-Floor Governors) are required to be representatives of the Exchange's trading floor - three from the options trading floor and two from the equities trading floor. Although the proposal would convert one On-Floor Equity Governor position into an On-Floor PBOT Governor position, there still would be three On-Floor Equity Options Governors and one On-Floor Equity Governor on the Phlx's Board of Governors. In addition, the proposal would not alter the right of Phlx members, through their member organization representatives, to vote on the nominees for the On-Floor Governor

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<sup>5</sup> The Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(3).

<sup>8</sup> To the extent that the proposed rule change runs counter to the Commission's recent governance and transparency proposals, Securities Exchange Act Release No. 50699 (November 18, 2004), 69 CFR 71125 (December 8, 2004), the Phlx represents that upon adoption of final rulemaking the Phlx will conform its By-laws accordingly. Telephone conversation among Scott Donnini, Vice President, Phlx, Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, Gordon Fuller, Counsel to the Assistant Director, Division, Commission and Geraldine Idrizi, Attorney, Division, Commission, on January 26, 2005.

positions, including the On-Floor PBOT Governor.<sup>9</sup> Moreover, the proposal would not interfere with Phlx members' right to submit independent nominations for the On-Floor Governor positions, including the On-Floor PBOT Governor. Although recommendations for the PBOT Governor position would be submitted to the Phlx's Nominating and Elections Committee by the PBOT Board of Governors, Phlx members, through their member organization representatives, can independently nominate by written petition candidates for On-Floor Governor positions, which would include the PBOT Governor position.<sup>10</sup> Therefore, in the Commission's view, the proposal is consistent with the Act's requirement that the Exchange assure the fair representation of its members in the selection of the Exchange's directors.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the Federal Register. The Commission notes that the amendment simply corrected a reference to a section of the Act that was contained in the original filing. The Commission therefore believes that it is appropriate to accelerate approval of the amendment so that the proposed rule change may be implemented on a timely basis.

#### 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. Comments may be submitted by any of the following methods:

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<sup>9</sup> As a result of the Exchange's recent demutualization, Phlx members, through their member organization's designated representative, vote on the nominees for the On-Floor Governor positions and the nominees that are selected by members must be elected by the holder of Phlx's Series A preferred stock. See Phlx By-laws, Article III, Section 3-2.

<sup>10</sup> See Phlx By-laws, Article III, Section 3-7.

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2005-11 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR- Phlx-2005-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR- Phlx-2005-11 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(3) of the Act.<sup>11</sup>

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-Phlx-2005-11), as amended, is approved, and Amendment No. 1 is approved on an accelerated basis.

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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<sup>11</sup> 15 U.S.C. 78f(b)(3).

<sup>12</sup> 15 U.S.C. 78f(b)(2).

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