

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51476; File No. SR-Phlx-2004-75)

April 5, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Floor Official Conflicts of Interest

On November 9, 2004, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule 124, Disputes; and Option Floor Procedure Advices-27, Floor Official Rulings – Options (“OFPA F-27”), to authorize Exchange staff³ to disqualify a Floor Official from participating in a particular ruling where it appears that such Floor Official has a conflict of interest. The proposed rule change was published for comment in the Federal Register on March 4, 2005.⁴ The Commission received no comments on the proposal.

The proposed rule defines a “conflict of interest” to exist where a Floor Official is directly or indirectly affiliated with a party seeking a Floor Official ruling; is a participant or is directly or indirectly affiliated with a participant in a transaction that is the subject of a Floor Official ruling; is a debtor or creditor of a party seeking a Floor Official ruling; or is an immediate family member of a party seeking a Floor Official ruling. The proposal does not

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ “Exchange staff” generally refers to staff of the Exchange’s Office of Market Surveillance present on the trading floor. Telephone conversation among Richard Rudolph, Director and Counsel, Phlx, Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission and Geraldine Idrizi, Attorney, Division, Commission on December 15, 2004.

⁴ See Securities Exchange Act Release No. 51272 (February 28, 2005), 70 FR 10738.

propose to limit the term “conflict of interest” to these four circumstances and Exchange staff are authorized to consider other circumstances, on a case-by-case basis, in determining the eligibility of a particular Floor Official to participate in a particular ruling.

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 exchange⁵ and, in particular, the requirements of Section 6(b) of the Act⁶ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, by providing expressly in the Exchange’s rules that Exchange staff are authorized to disqualify a Floor Official from participating in a particular ruling where it appears that such Floor Official has a conflict of interest. In the Commission’s view, the proposed rule change would further the goal of fair and objective decision making by Floor Officials, because the Exchange would be able to take the steps necessary to prevent a Floor Official from participating in a particular ruling where it appears that the Floor Official has a conflict of interest.

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Phlx-2004-75), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland
Deputy Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).