

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53692; File No. SR-Phlx-2005-62)

April 20, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change Relating to Amending Exchange Delisting Rules to Conform to Recent Amendments to Commission Rules Regarding Removal from Listing and Withdrawal from Registrations

I. Introduction

On October 25, 2005, the Philadelphia Stock Exchange, Inc. (“Phlx” or “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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange delisting rules to conform to recent amendments to Commission rules regarding removal from listing and withdrawal from registration. On January 4, 2006, Phlx filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the Federal Register on March 23, 2006.⁴ On March 31, 2006, Phlx filed Amendment No. 2 to the proposed rule change.⁵ On April 12, 2006,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Phlx amended its rule text and the purpose section of the Exchange's Form 19b-4 to clarify the effective date of the proposed rule change and revised Phlx Rule 809 to state that an issuer proposing to withdraw a security from listing on the Exchange must provide a copy of Form 25 to the Exchange upon filing with the Commission.

⁴ See Securities Exchange Act Release No. 53496 (March 16, 2006), 71 FR 14769.

⁵ In Amendment No. 2, Phlx amended its rule text to clarify that an issuer that is below the continued listing policies and standards of the Exchange and seeks to voluntarily apply to withdraw a class of securities from listing must disclose that it is no longer eligible for continued listing in its statement of material facts

Phlx filed Amendment No. 3 to the proposed rule change.⁶ No comments were received regarding the proposal. This order approves the proposed rule change, as amended, on an accelerated basis, publishes notice of Amendment Nos. 2 and 3 to the proposed rule change, and grants accelerated approval to Amendment Nos. 2 and 3.

II. Description of the Proposed Rule Change

Section 12 of the Act⁷ and Rule 12d2-2 thereunder⁸ (“SEC Rule 12d2-2”) govern the process for the delisting and deregistration of securities listed on national securities exchanges. Recent amendments to SEC Rule 12d2-2 (“amended SEC Rule 12d2-2”) and other Commission rules require the electronic filing of revised Form 25⁹ on the Commission’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system by exchanges and issuers for all delistings, other than delistings of standardized options and securities futures, which are exempted.¹⁰

In the case of exchange-initiated delistings, amended SEC Rule 12d2-2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for:

relating to the reason for withdrawal from listing, its public press release, and its Web site notice.

⁶ In Amendment No. 3, the Exchange revised Phlx Rule 811 to clarify that an issuer that is below the continued listing policies and standards of the Exchange and considering delisting may file a delisting application pursuant to the procedures outlined in amended Phlx Rule 809(b)-(c).

⁷ 15 U.S.C. 78j.

⁸ 17 CFR 240.12d2-2.

⁹ 17 CFR 249.25.

¹⁰ See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005) (“SEC Rule 12d2-2 Approval Order”).

- (i) Notice to the issuer of the exchange's decision to delist its securities;
- (ii) An opportunity for appeal to the exchange's board of directors, or to a committee designated by the board; and
- (iii) Public notice of the national securities exchange's final determination to remove the security from listing and/or registration, by issuing a press release and posting notice on its Web site. Public notice must be disseminated no fewer than 10 days before the delisting becomes effective pursuant to amended SEC Rule 12d2-2(d)(1), and must remain posted on its Web site until the delisting is effective.

Phlx Rule 811 (Delisting Policies and Procedures) establishes the procedures for the Exchange to delist a company that is below the Exchange's continued listing criteria. The Exchange proposes to revise Phlx Rule 811 to incorporate the new requirements set forth in amended SEC Rule 12d2-2(b). The provisions set forth in current Phlx Rule 811, which provide for notification to the issuer in the event that the Exchange determines to delist the issuer's securities and the right to appeal the Exchange's determination, satisfy the minimum provisions set forth in amended SEC Rule 12d2-2(b)(1)(i)-(ii). Phlx rules do not currently provide for the mandated public notice, and accordingly, amended Phlx Rule 811(g) would require the Exchange to provide public notice of its final determination to remove a security from listing and/or registration, pursuant to SEC Rule 12d2-2(b)(1)(iii). In addition, proposed Commentary to Phlx Rule 810 would require the Exchange to deliver a copy of the Form 25 promptly to the issuer, pursuant to amended SEC Rule 12d2-2(b)(2).

With respect to issuer voluntary delisting procedures, the Exchange proposes to amend Phlx Rule 811 to require an issuer seeking to voluntarily delist from the Exchange to submit Form 25 to the Commission in compliance with the requirements of amended SEC Rule 12d2-2(c). In addition, the issuer would be required to provide a copy of the Form 25 to the Exchange simultaneously with the filing of the Form with the Commission.

In addition, Phlx proposes to amend Phlx Rule 809(c) to clarify that not less than ten days before the issuer submits Form 25 an issuer seeking to voluntarily apply to withdraw a security from listing on the Exchange where the issuer has received notice from the Exchange, pursuant to Phlx Rule 811 or otherwise, that the issuer is below the Exchange's continued listing policies and standards, or that the issuer is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must:

- (i) Provide written notice to the Exchange of its decision to withdraw from listing indicating all material facts relating to the reasons for withdraw in compliance with amended SEC Rule 12d2-2(c); and
- (ii) Contemporaneously with providing such notice to the Exchange disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in (A) its statement of all material facts relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by amended SEC Rule 12d2-2(c)(2)(ii), and (B) its release and Web site notice required by amended SEC Rule 12d2-2(c)(2)(iii).¹¹

¹¹ See Amendment No. 2, supra note 5.

Finally, the Exchange has proposed changes in its rules to clarify that the Form 25 serves as the application to remove a security from listing and/or registration and to specify that the proposed changes will be effective as of April 24, 2006 as required by amended SEC Rule 12d2-2.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1, 2, and 3

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 exchange¹² and, in particular, the requirements of Section 6 of the Act.¹³ Specifically, as discussed below, the Commission finds that the proposal, as amended, is consistent with Section 6(b)(5) of the Act,¹⁴ which requires, in part, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing 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. Further, as noted in more detail below, the changes being adopted by Phlx meet the requirements of amended SEC Rule 12d2-2.

¹² In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

A. Exchange Delisting

Amended SEC Rule 12d2-2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for notice to the issuer of the exchange's decision to delist, opportunity for appeal, and public notice of the exchange's final determination to delist. The Commission believes that Phlx's current rules and proposal comply with the dictates of amended SEC Rule 12d2-2(b).

Phlx rules currently provide the requisite issuer notice as well as an opportunity for appeal to a committee designated by the Exchange's Board of Governors. Specifically, issuers may appeal delisting determinations by the Allocation, Evaluation and Securities Committee to an ad hoc Exchange committee appointed by the Board of Governors and the committee will consist of three persons, at least one of which must be a member of the Board of Governors.¹⁵ Finally, the proposed rule change will provide for public notice of the exchange's final determination to remove the security from listing and/or registration. This should ensure that investors have adequate notice of an exchange delisting and is consistent with the protection of investors under Section 6(b)(5) of the Act.¹⁶

B. Issuer Voluntary Delisting

The Exchange proposes to set forth in its Exchange rules the general requirements

¹⁵ The other two members of the Committee may be governors, members, Exchange officials, and/or other persons (not having an interest in the matter) as the Chairman of the Board of Governors shall determine. See Phlx Rule 811(d).

¹⁶ 15 U.S.C. 78f(b)(5).

of amended SEC Rule 12d2-2(c) regarding issuer voluntary delisting. Accordingly, amended Phlx Rule 809 would state that an issuer shall delist its security by filing Form 25 electronically via Edgar in compliance with all of the requirements of amended SEC Rule 12d2-2(c). The Commission believes that the proposal will better inform issuers of the requirements for voluntary delisting of their securities under Phlx rules and federal securities laws.

The proposal also sets forth a new requirement not in amended SEC Rule 12d2-2 that would require an issuer seeking to voluntarily delist its security to provide a copy of the Form 25 that it has filed with the Commission simultaneously with such filing. The Commission believes that this requirement will allow the Exchange to be fully informed of the filing of a Form 25 and be prepared to take timely action to delist the security in accordance with the filing of the Form.

In addition, Phlx proposes to amend Phlx Rule 809 to clarify that not less than ten days before the issuer submits Form 25, an issuer seeking to voluntarily apply to withdraw a security from listing on the Exchange where the issuer has received notice from the Exchange, pursuant to Phlx Rule 811 or otherwise, that the issuer is below the Exchange's continued listing policies and standards, or that the issuer is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must:

- (i) Provide written notice to the Exchange of its decision to withdraw from listing indicating all material facts relating to the reasons for withdraw in compliance with amended SEC Rule 12d2-2(c); and

(ii) Contemporaneously with providing such notice to the Exchange disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in (A) its statement of all material facts relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by amended SEC Rule 12d2-2(c)(2)(ii), and (B) its release and Web site notice required by amended SEC Rule 12d2-2(c)(2)(iii).¹⁷

The Commission believes that this requirement will allow shareholders to be informed and aware that the issuer has failed to meet Exchange listing standards and is voluntarily delisting with the consent of the Exchange. Issuers will therefore not be permitted to delist voluntarily without public disclosure of their noncompliance with Exchange listing standards.

C. Accelerated Approval of Proposed Rule Change and Amendment No. 1, and Amendment Nos. 2 and 3

Pursuant to Section 19(b)(2) of the Act,¹⁸ the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds good cause for approving the proposed rule change, as amended, prior to the 30th day after publishing notice of the proposed rule change and Amendment Nos. 1, 2, and 3 in the Federal Register. In the SEC Rule 12d2-2 Approval Order, the Commission stated that the

¹⁷ See Amendment No. 2, supra note 5.

¹⁸ 15 U.S.C. 78s(b)(2).

compliance date of the amendments is April 24, 2006.¹⁹ In addition, no comments were received on the proposal, as originally published.²⁰ Accelerated approval of the proposal, as amended, would enable the Exchange's amended rules to become operative by the compliance date set forth by the Commission.

The Commission further finds good cause for approving Amendment Nos. 2 and 3 to the proposal, prior to the 30th day after publishing notice of Amendment Nos. 2 and 3 in the Federal Register. In Amendment No. 2, Phlx amended its rule text to clarify that an issuer that is below the continued listing policies and standards of the Exchange and seeks to voluntarily apply to withdraw a class of securities from listing must disclose its status. In Amendment No. 3, the Exchange revised Phlx Rule 811 to clarify that an issuer that is below the continued listing policies and standards of the Exchange and considering delisting may file a delisting application pursuant to the procedures outlined in amended Phlx Rule 809(b)-(c).

As previously discussed, the revisions made to the proposal in Amendment No. 2 will allow shareholders to be informed and aware that the issuer has failed to meet Exchange listing standards and is voluntarily delisting with the consent of the Exchange. The Commission believes that granting accelerated approval of Amendment No. 2 will permit the Exchange to implement this new provision as expeditiously as possible, to the benefit of investors. In addition, the revisions made to the proposal in Amendment No. 3 are clarifying changes. The Commission also believes that accelerating approval of Amendment Nos. 2 and 3 is appropriate because these revisions do not raise new regulatory issues.

¹⁹ See SEC Rule 12d2-2 Approval Order, supra note 10.

²⁰ See note 4, supra.

Accordingly, pursuant to Section 19(b)(2) of the Act,²¹ the Commission finds good cause to approve the proposed rule change, as amended, prior to the 30th day after notice of the proposed rule change and Amendment Nos. 1, 2, and 3 are published in the Federal Register.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether Amendment Nos. 2 and 3 are consistent with the Act. Comments may be submitted by any of the following methods:

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. Please include File Number SR-Phlx-2005-62 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2005-62. 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 that are filed with the Commission, and all written communications relating to the proposed rule

²¹ Id.

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 Room. Copies of the 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-2005-62 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (File No. SR-Phlx-2005-62), as amended by Amendment Nos. 1, 2, and 3, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Nancy M. Morris
Secretary

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).