

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49514; File No. SR-Phlx-2004-03)

April 1, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No.1 by the Philadelphia Stock Exchange, Inc. Relating to the Rescission of Exchange Rule 713

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on February 9, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with 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 Phlx. On March 29, 2004, the Phlx amended the proposal.³ The Exchange filed the proposed rule change under Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6)⁵ thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See March 26, 2004 letter from Mark I. Salvacion, Director and Counsel, Phlx, to Rose Wells, Division of Market Regulation, Commission and attachments ("Amendment No.1"). Amendment No. 1 replaces and supersedes the original filing in its entirety.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6). The Phlx provided the Commission with written notice of its intention to file the proposed rule change on January 28, 2004. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have begun on March 29, 2004, the date of filing of Amendment

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

The Phlx proposes to rescind Exchange Rule 713, Statements Available to Customers. Proposed deleted text is in brackets.

[Statements Available to Customers]

[Rule 713. Each member organization shall make available to any customer of such organization at his request a statement of its financial condition as of the date of its most recent answer to the financial questionnaire of the Exchange or as of a date subsequent thereto. The financial statement shall fairly present the financial condition of such organization.

As used herein, the term "customer" means any person who, in accordance with the ordinary usage of the trade, would be considered a customer at the time of the request.]

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 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 rescind Exchange Rule 713, because it is obsolete.

Currently, Rule 713 provides that each member organization shall make available to any customer of such organization at his request a statement of its financial condition as of the date of its most recent answer to the financial questionnaire of the Exchange or as of a date subsequent thereto. The Exchange no longer utilizes the financial questionnaire referred to in Rule 713. Those member organizations that are required to provide annual audited financial statements currently do so pursuant to Rule 17a-5(c)⁶ under the Act, rather than Rule 713.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular, in that it is intended to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general it is intended to protect investors and the public interest by eliminating obsolete and outdated rules applicable to exchange member firms.

⁶ Amendment No. 1 contained a typographical error: Rule 17a-5(d) was referenced instead of Rule 17a-5(c). As a result of a telephone conversation between Commission staff and Mark I. Salvacion on April 1, 2004, Commission staff corrected the error without requiring that an amendment be filed.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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 either solicited or received.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act⁹ and Rule 19b-4(f)(6) thereunder¹⁰ because the proposed rule change (1) does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Phlx has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.¹¹ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ As required under Rule 19b-4(f)(6)(iii), the Phlx provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, on January 28, 2004.

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.¹²

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-Phlx-2004-03. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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

¹² 15 U.S.C. 78s(b)(3)(C).

Room. 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-2004-03 and should be submitted by [insert 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).