

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49748; File No. SR-Phlx-2004-34)

May 20, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule by the Philadelphia Stock Exchange, Inc. Relating to the Rescission of Commentary .01(f) to Exchange Rule 708

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 11, 2004, 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 the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Phlx proposes to rescind Commentary .01(f) to Exchange Rule 708 (Acts Detrimental to the Interest or Welfare of the Exchange). The text of the proposed rule change is set forth below. Proposed new language is in *italics*, and proposed deletions are in [brackets].

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Rule 708. Acts Detrimental to the Interest or Welfare of the Exchange

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A member, member organization, or person associated with or employed by a member or member organization shall not engage in acts detrimental to the interest or welfare of the Exchange.

Commentary:

.01 Acts which could be deemed detrimental to the interest or welfare of the Exchange include, but are not limited to, the following:

- (a) conviction or guilty plea to any felony charge or any securities or fraud-related criminal misconduct;
- (b) use or attempted use of unauthorized assistance while taking any securities industry or Exchange-related qualification examination;
- (c) failure to make a good faith effort to pay any fees, dues, fines or other monies due and owing to the Exchange;
- (d) destruction or misappropriation of Exchange or member property; or
- (e) misconduct on the trading floor, in violation of the Exchange's Order and Decorum Regulations, that is repetitive, egregious or of a publicly embarrassing nature to the Exchange.
- [(f) any action by a member of the Board of Governors or any Exchange Committee, or by any member organization associated with such member, which contravenes the Seat Transaction Policy contained in Article V of the Code of Conduct for Governors and Committee Members.]

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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 Commentary .01(f) to Exchange Rule 708 because this comment has been made obsolete as a result of the demutualization of the Exchange.³

Currently, Commentary .01(f) to Phlx Rule 708 provides that acts detrimental to the interest or welfare of the Exchange include, but are not limited to, any action by a member of the Board of Governors or any Exchange Committee, or by any member organization associated with such member, which contravenes the Seat Transaction Policy contained in Article V of the Code of Conduct for Governors and Committee Members. Ownership in the Exchange is no longer represented through seats but rather shares of stock in the Exchange. Therefore, due to the elimination of the concept of seat ownership, the Seat Transaction Policy in Commentary .01(f)

³ See Securities Exchange Act Release No. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73).

to Rule 708 is obsolete.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act⁵ in particular, in that it removes an obsolete commentary from Phlx Rule 708.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor 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 Act⁶ and Rule 19b-4(f)(6) thereunder⁷ 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 from the date of filing, or such shorter time that the Commission may designate if consistent with

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

the protection of investors and the public interest.⁸ 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 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.⁹

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. 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-2004-34 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-2004-34. 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

⁸ 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, along with a brief description and text of the proposed rule change, at least five business days prior to the filing date.

⁹ 15 U.S.C. 78s(b)(3)(C).

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 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 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-2004-34 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).