

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50401; File No. SR-Phlx-2004-39)

September 16, 2004

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to Retroactive Application of Permit Holder Fees and Billing Policies

On June 30, 2004, 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: (1) apply retroactively a recent amendment to its schedule of fees and charges (“Fee Schedule”) that adopted a permit fee category, designated as “Other,” for permit holders who did not fit within any other permit fee categories; (2) apply retroactively a billing policy that set the date of notification for terminating a permit as the date that permit fee billing would cease; and (3) assess retroactively only one monthly permit fee in certain limited situations where two monthly permit fees otherwise would be imposed.³ The proposal would apply these Fee Schedule changes and billing policies retroactively to February 2, 2004, the date that the permit fees were first imposed. On July 12, 2004, Phlx filed Amendment No. 1 to the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Phlx previously adopted these changes to its Fee Schedule and billing policies in a rule change that was effective on May 3, 2004, the date it was filed with the Commission. See Securities Exchange Act Release No. 49856 (June 15, 2004), 69 FR 3441 (June 21, 2004) (SR-Phlx-2004-32).

proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the Federal Register on August 6, 2004.⁵ The Commission received no comments on the proposal.

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 exchange⁶ and, in particular, the requirements of Section 6(b) of the Act⁷ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,⁸ which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The proposed rule change would apply recent amendments to the Exchange's Fee Schedule and billing policies retroactively to February 2, 2004, the date that permit fees were first imposed by the Exchange in connection with its recent demutualization.⁹ The proposed rule change is intended to remedy the fact that a few permit holders did not fit into any of the permit fee categories initially established by the

⁴ See letter from Murray L. Ross, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated July 9, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange removed references in the Fee Schedule to the proposed date that the retroactive fees would take effect.

⁵ See Securities Exchange Act Release No. 50129 (July 30, 2004), 69 FR 47970.

⁶ 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).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See Securities Exchange Act Release No. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (Order approving the demutualization of Phlx).

Exchange and thus were not subject to permit fees as of February 2, 2004. Thus, the proposed rule change is intended to apply the Exchange's permit fees and permit fee billing practices in an even-handed manner to all Exchange member organizations since the introduction of the permit fees on February 2, 2004.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-Phlx-2004-39), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).