

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50851; File No. SR-Phlx-2004-51)

December 14, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Phlx Regulation 5, Visitors and Applicants

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 7, 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 and II below, which Items have been prepared by Phlx. On December 6, 2004, Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Phlx Regulation 5, Visitors and Applicants. The text of the proposed rule change is set forth below. Additions are italicized. Deletions are bracketed.

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Regulation 5 – [Visitors and Applicants] Guests

Non-member [visitors] guests will be permitted on the trading floor at the discretion of the respective floor committee (Options, FCO or Floor Procedures). All [visitors] guests must be

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 replaced the original filing in its entirety. Amendment No. 1 clarified that violations of Regulation 5 would be enforced against members and not the guests themselves, and added a description for the Applicant Access Card.

signed in by a member or Exchange official and accompanied at all times by a member, associated person of a member or an Exchange official.

[As a visitor, the applicant must be escorted by a representative of a member firm at all times while on the trading floor, and failure to do so shall result in a violation of this regulation by such member Firm.

Once an applicant has filed an application with the Office of the Secretary pursuant to By-Law Article XII, Section 12-4, the Examinations Department and the Office of the Secretary shall conduct clearance procedures to verify personal data and financial viability. The applicant may be admitted as a visitor for ten business days, after which the applicant must submit an Applicant Access Card/Floor Badge application which is subject to approval by the Exchange pursuant to satisfactory completion of personal and financial data verification. Twenty-one days after the Access Card is issued, it will automatically expire; an applicant may apply to the Chairman of the Admissions Committee or his designee for a twenty-one day extension.]

1st Occurrence	Official Warning
2nd Occurrence	\$50.00
3rd Occurrence	\$100.00
4th Occurrence	\$200.00
5th and Thereafter	Sanction is discretionary with Business Conduct Committee

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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 Exchange 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. 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 update Phlx Regulation 5, Visitors and Applicants, enacted as a rule of order and decorum under Phlx Rule 60. Phlx Regulation 5 originally applied generally to non-member guests' access to the trading floor.<sup>4</sup> It was amended by the Exchange in 1992 to create an "applicant" status for prospective Exchange members from whom an application for membership had been filed and for whom the personal background check had been completed, but whose membership application process would not be completed until a subsequent posting period had been completed.<sup>5</sup> That rule filing (File No. SR-Phlx-91-06) stated that, while clearance procedures are being conducted, which normally take about ten business days to complete, the prospective member would remain in a "visitor" status, requiring

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<sup>4</sup> Violations of Regulation 5 are enforced against members, member organizations, and/or associated persons who permit their guests to have access to the Exchange floor without properly signing them in, accompanying them, and otherwise ensuring their compliance with the rule.

<sup>5</sup> See Securities Exchange Act Release No. 30416 (February 26, 1992), 57 FR 7836 (March 4, 1992) (approving File No. SR-Phlx-91-06).

the signature of a member for entry on the floor and constant accompaniment by a member while on the floor. Once the clearance procedures were completed, the applicant would submit an “Applicant Access Card/Floor Badge Application,” and upon issuance of the Applicant Access Card<sup>6</sup> and Floor Badge, the applicant would have unescorted access to the floor and not have to be signed in by a member. According to the Exchange, Phlx Membership Services no longer uses an Applicant Access Card/Floor Badge Application and no longer issues Applicant Access Cards. Instead, applicants for membership who desire access to the trading floor are required to register as on-floor trading personnel pursuant to Phlx Rule 620(b), Trading Floor Registration. Once registered under Phlx Rule 620(b), applicants are issued the same access card issued to members, members’ staff and Exchange staff to permit access to the Exchange floor.

Therefore, Phlx proposes to return Regulation 5 to its pre-1992 wording. As such, Phlx Regulation 5 would continue to apply to guests who do not qualify for registration as on-floor trading personnel under Phlx Rule 620(b).

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<sup>6</sup> The Applicant Access Card, an electronic proximity card, was an access card designed to permit access to the Exchange floor for a period of 21 days. After that period expired, the applicant’s use of the Applicant Access Card would generate an alert to Exchange personnel who would then obtain the return of the Applicant Access Card from the applicant.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it would eliminate outdated language which no longer reflects current procedures at the Exchange regarding access to the trading floor by applicants for membership.

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

The Exchange does not believe that the proposed rule change would 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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.<sup>9</sup>

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2004-51 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-2004-51. 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 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of this 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-2004-51 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.<sup>10</sup>

Margaret H. McFarland,  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).