

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51127; File No. SR-Phlx-2005-11)

February 2, 2005

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Article III, Section 3-6 and Article IV, Section 4-1 of its By-laws

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 January 31, 2005, the Philadelphia Stock Exchange, Inc. (“Phlx” or the “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. 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 amend Article III, Section 3-6 and Article IV, Section 4-1 its By-Laws to convert one of the On-Floor Equity Governor positions on the Board of Governors into a Philadelphia Board of Trade, Inc. (“PBOT”) representative Governor position.

The text of the proposed amendments to Article III, Section 3-6 and Article IV, Section 4-1 of the Exchange’s By-laws is set forth below.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Italics indicate new text; brackets indicate deletions.

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Article III

Sec. 3-6.

Open Meetings of Nominating and Elections Committee-Recommendations-Notice

- (a) The Nominating and Elections Committee shall hold at least two (2) open meetings during the month of January in each year for the purpose of receiving recommendations as to candidates for positions as On-Floor Governors. Recommendations for On-Floor Governors may be made by any member, participant or Member Organization Representative or by any member of the Nominating and Elections Committee then in office. With respect to the On-Floor PBOT Governor, recommendations shall be submitted by the PBOT Board of Governors. Recommendations may be submitted in writing or they may be presented in person. Notice of such meetings and of the period within which recommendations may be submitted in writing or presented in person shall be given by the Secretary of the Exchange to all members, participants and Member Organization Representatives.
- (b) No change

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Article IV

Sec. 4-1.

Number and Composition

The management of the business and affairs of the Exchange shall be vested in the Board of Governors. The Board of Governors shall be composed of the Chairman of the Board of Governors, who shall be the individual then holding the office of Chief Executive Officer of the

Exchange, and 21 Governors as hereafter provided. There shall be five (5) Governors (On-Floor Governors) consisting of: [Two (2)] One (1) Governor[s] who [are] is an industry Governor[s] and [are] is a member[s] primarily engaged in business on the Exchange's Equity Floor or a general partner[s], executive officer[s] (vice president and above) or member[s] associated with a member organization[s] primarily engaged in business on the Exchange's Equity Floor (On-Floor Equity Governor[s]); one (1) Governor who is an industry Governor and is a member of the Philadelphia Board of Trade (On-Floor PBOT Governor); one (1) Governor who is an industry Governor and is a member primarily engaged in business as a specialist on the Exchange's Equity Options Floor or a general partner, executive officer (vice president and above) or a member associated with a member organization primarily engaged in specialist business on the Exchange's Equity Options Floor (On-Floor Equity Options Specialist Governor); one (1) Governor who is an industry Governor and is a member primarily engaged in business as a registered options trader on the Exchange's Equity Options Floor or a general partner, executive officer (vice president and above) or a member associated with a member organization primarily engaged in registered options trader business on the Exchange's Equity Options Floor (On-Floor Equity Options Registered Options Trader Governor); and one (1) Governor who is an industry Governor and is a member primarily engaged in business on the Exchange's Equity Options Floor as a floor broker (On-Floor Equity Options Broker Governor).

There shall be five (5) Governors (Off-Floor Governors) who are industry Governors and are general partners, executive officers (vice president or above), or members or participants associated with member or participant organizations which conduct a non-member or nonparticipant public customer business and shall individually not be primarily engaged in business activities on the Exchange Floor (Off-Floor Governors). There shall be eleven (11)

nonindustry Governors, of whom at least five (5) shall be public Governors. There also shall be one (1) On-Floor and one (1) Off-Floor Vice Chairman of the Board of Governors.

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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 change the composition of the Phlx's Board of Governors to better reflect the Exchange's business by replacing an On-Floor Equity Governor position with a PBOT representative Governor position. PBOT is a subsidiary of the Exchange.

With regard to changes to By-Law Article III, Sections 3-6 and Article IV, Section 4-1, the proposed amendment converts an On-Floor Equity Governor position into that of a PBOT representative Governor position. Recommendations for the PBOT Governor position candidate would be submitted to the Nominating and Elections Committee by the PBOT Board of

Governors.³ The Phlx's Board of Governors believes that such a change in composition is appropriate to reflect the investment in and strategic initiatives regarding the Exchange's ownership interests in the PBOT. The Phlx believes that the new Board of Governors composition, with a PBOT representative Governor, would more accurately represent the strategic ownership and on-going business interests of the Exchange while still affording appropriate proportional representation of On-Floor Governors – three from the options trading floor, one from the equities trading floor and one from the PBOT.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(3) of the Act,⁵ in particular, in that it assures a fair representation of its members in the selection of its directors and administration of its affairs and that it is designed, in general, to protect investors and the public interest.

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

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

³ To the extent that the proposed rule change runs counter to the Commission's recent governance and transparency proposals, Securities Exchange Act Release No. 50699 (November 18, 2004), 69 CFR 71125 (December 8, 2004), the Phlx represents that upon adoption of final rulemaking the Phlx will conform its By-laws accordingly. Telephone conversation among Scott Donnini, Vice President, Phlx, Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, Gordon Fuller, Counsel to the Assistant Director, Division, Commission and Geraldine Idrizi, Attorney, Division, Commission, on January 26, 2005.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(3).

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

No written comments were 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 the Exchange consents, the Commission shall:

- (a) by order approve such rule change; or
- (b) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2005-11 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-2005-11. 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 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-2005-11 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.⁶

Margaret H. McFarland
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).