

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51272; File No. SR-Phlx-2004-75)

February 28, 2005

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Floor Official Conflicts of Interest

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 November 9, 2004, 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 Exchange Rule 124, Disputes, and Option Floor Procedure Advices-27, Floor Official Rulings – Options (“OFPA F-27”), to authorize Exchange staff to determine that a Floor Official is ineligible to participate in a particular ruling where it appears that such Floor Official has a conflict of interest.

Below is the amended text of the proposed rule change. Proposed new language is in italics.

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Disputes

Rule 124. (a) – (d) . . . No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Commentary:

.01. Exchange staff may determine that a Floor Official is ineligible to participate in a particular ruling where it appears that such Floor Official has a conflict of interest. For purposes of this Rule, and without limitation, a conflict of interest exists where a Floor Official: (a) is directly or indirectly affiliated with a party seeking a Floor Official ruling; (b) is a participant or is directly or indirectly affiliated with a participant in a transaction that is the subject of a Floor Official ruling; (c) is a debtor or creditor of a party seeking a Floor Official ruling; or (d) is an immediate family member of a party seeking a Floor Official ruling. Exchange staff may consider other circumstances, on a case-by-case basis, in determining the eligibility or ineligibility of a particular Floor Official to participate in a particular ruling due to a conflict of interest.

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F-27 Floor Official Rulings-Options

Floor Officials are empowered to render rulings on the trading floor to resolve trading disputes occurring on and respecting activities on the trading floor. All rulings rendered by Floor Officials are effective immediately and must be complied with promptly. Failure to promptly comply with a ruling concerning a trading dispute may result in referral to the Business Conduct Committee. Failure to promptly comply with other rulings issued pursuant to Order and Decorum Regulations or Floor Procedure Advices and not concerning a trading dispute may result in an additional violation. Floor Officials need not render decisions in any instance where the request for a ruling was not made within a reasonable period of time. A Floor Official should not render a decision or authorize a citation where such Floor Official was involved in or affected by the dispute, as well as in any situation where the Floor Official is not able to objectively and fairly render a decision.

Floor Officials shall endeavor to be prompt in rendering decisions. However, in any instance where a Floor Official has determined that the benefits of further discovery as to the facts and circumstances of any matter under review outweigh the monetary risks of a delayed rulings, the Floor Official may determine to delay rendering the ruling until such time as that further discovery is completed. In issuing decisions for the resolution of trading disputes, Floor Officials shall institute the course of action deemed by the ruling floor Official to be more fair to all parties under the circumstances at the time. A Floor Official may direct the execution of an order on the floor, of adjust the transaction terms or participants to an executed order on the floor. However, two Floor Officials may nullify a transaction if they determine the transaction to have been in violation of Rules 1014 (Obligations and Restrictions Applicable to specialist and ROTs), 1015 (Quotation Guarantees), 1017 (Priority and Parity at Openings in Options), 1033 (Bids and Offers) or 1080 (AUTOM).

A minimum of three members of the Sub-Committee on Rules and Rulings, a sub-committee of the standing committee, or the Chairperson of the standing committee (or his designee) if three Sub-Committee members cannot be promptly convened, shall be empowered by the standing committee to review Floor Official rulings (“Review Panel”). Requests for a review must be submitted to the Director of the Market Surveillance Department of the Exchange (or his designee) within 15 minutes from the time the contested ruling was rendered. Any person who appeals a Floor Official ruling concerning a trading dispute and loses will be subject to a \$250.00 fee upon a finding by the Review Panel that such appeal is frivolous. The Review Panel shall endeavor to meet on the matter as soon as practicable after notice of a request for a review of a Floor Official ruling. Floor Official rulings may be sustained, overturned or modified by a majority vote of the Review Panel members present. In making a determination,

the Review Panel may consider facts and circumstances not available to the ruling Floor Official as well as action taken by the parties in reliance on the Floor Official's ruling (e.g., cover, hedge, and related trading activity). Decisions of the Review Panel will be considered final decisions of the standing committee and may be appealed to the Exchange's Board of Governors pursuant to Exchange By-Law Article XI. Neither Floor Official rulings nor Review Panel decisions reviewing Floor Official rulings preclude a person from also availing upon the Exchange's Arbitration facilities.

Exchange staff may determine that a Floor Official is ineligible to participate in a particular ruling where it appears that such Floor Official has a conflict of interest. For purposes of this Rule, and without limitation, a conflict of interest exists where a Floor Official: (a) is directly or indirectly affiliated with a party seeking a Floor Official ruling; (b) is a participant or is directly or indirectly affiliated with a participant in a transaction that is the subject of a Floor Official ruling; (c) is a debtor or creditor of a party seeking a Floor Official ruling; or (d) is an immediate family member of a party seeking a Floor Official ruling. Exchange staff may consider other circumstances, on a case-by-case basis, in determining the eligibility or ineligibility of a particular Floor Official to participate in a particular ruling due to a conflict of interest.

FINE SCHEDULE . . . No change.

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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 preclude Floor Officials from participating in rulings where they have conflicts of interest that may interfere with their ability to make fair and objective decisions. Accordingly, the proposed rule change would provide expressly that Exchange staff would be authorized to disqualify a Floor Official from participation in a particular ruling where it appears that such Floor Official has a conflict of interest.

Currently, Exchange Rule 124 and OFPA F-27 authorize Phlx Floor Officials to render rulings on the trading floor to resolve trading disputes occurring on and respecting activities on the trading floor. Floor Officials are also authorized to rule on Phlx member requests for relief from the requirements of certain rules in certain circumstances. The Exchange believes that a Floor Official should not, however, render a decision or authorize a citation where such Floor Official is involved in or affected by the dispute, as well as in any situation where the Floor Official is not able to objectively and fairly render a decision.

The proposed rule change would authorize Exchange staff³ to disqualify a Floor Official from participation in a particular ruling where it appears that such Floor Official has a conflict of interest. Generally, Exchange staff would assign a Floor Official to hear and rule on a trading

³ “Exchange staff” generally refers to staff of the Exchange’s Office of Market Surveillance present on the trading floor. Telephone conversation among Richard Rudolph, Director and Counsel, Phlx, Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission and Geraldine Idrizi, Attorney, Division, Commission on December 15, 2004.

dispute or member request for relief from the requirements of an Exchange rule. The proposed rule change would require Exchange staff, prior to making any such assignment, to determine whether the Floor Official has a conflict of interest with respect to that particular dispute or request. If a conflict exists, then such Floor Official would be ineligible to participate in that ruling.⁴ The proposed rule would define a “conflict of interest” to exist where a Floor Official is directly or indirectly affiliated with a party seeking a Floor Official ruling; is a participant or is directly or indirectly affiliated with a participant in a transaction that is the subject of a Floor Official ruling; is a debtor or creditor of a party seeking a Floor Official ruling; or is an immediate family member of a party seeking a Floor Official ruling. The proposed rule would not limit the term “conflict of interest” to these four circumstances and Exchange staff would be authorized to consider other circumstances, on a case-by-case basis, in determining the eligibility of a particular Floor Official to participate in a particular ruling.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, by providing expressly in the Exchange’s rules that Exchange staff would be authorized to disqualify a Floor Official from participation in a particular ruling where it appears

⁴ Telephone conversation among Richard Rudolph, Director and Counsel, Phlx, Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission and Geraldine Idrizi, Attorney, Division, Commission on December 15, 2004.

⁵ 15 U.S.C. 78s(b).

⁶ 15 U.S.C. 78s(b)(5).

that such Floor Official has a conflict of interest, thus ensuring that the Exchange is able to take all necessary steps to prevent Floor Officials from making rulings where they have conflicts of interest that may interfere with their ability to make fair and objective decisions.

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.

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 proposed 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-2004-75 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-2004-75. 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-2004-75 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.⁷

Margaret H. McFarland
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).