

require, is reasonable.⁹ The proposal sets forth an absolute time frame within which information must be provided to the Exchange, while allowing the Exchange a certain level of flexibility in acquiring information in certain instances. The Commission believes such flexibility is necessary for adequate oversight of Member financial arrangements and will allow the Exchange to obtain information immediately, if necessary. The Commission further believes that it is reasonable for the Exchange to have the authority to subject Members to disciplinary action where they have failed to disclose the terms of financial arrangements to the Exchange. The Commission believes that such disclosure is necessary for appropriate monitoring of Market Maker activity. The Commission believes that the proposal will promote investor protection, as failure to disclose such arrangements could result in reliance on inaccurate information to the detriment of the Exchange and its Members.

The Commission finds good cause to approve Amendment No. 1 to the filing prior to the 30th day after the publication of the notice of filing because the Amendment does not affect the substantive rights of Members and accelerated approval will facilitate the uninterrupted implementation of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 changes 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 at the Commission's Public Reference Room. Copies of the filing will also be available at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-97-12 and should be submitted by September 19, 1997.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change and Amendment No. 1 are consistent with the Act and the rules and regulations thereunder applicable to the PCX, and in particular Section 6(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-PCX-97-12) be and hereby is approved, and that Amendment No. 1 filed thereto be and hereby is approved on an accelerated basis.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-23048 Filed 8-28-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38960; File No. SR-PHLX-97-31]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendments to Certificate of Incorporation and By-Laws

August 22, 1997.

I. Introduction

On June 25, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend its Certificate of Incorporation and By-Laws.

The proposed rule change was published for comment in the **Federal Register** on July 10, 1997.³ No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

On May 21, 1997, the Phlx Board of Governors approved draft amendments to the Phlx Certificate of Incorporation and By-Laws that are designed to promote an enhanced governance structure for the Exchange. Thereafter,

with the Phlx Board's endorsement, the amendments were announced to the membership in accordance with Exchange By-Law Article XXII, Section 22-2.⁴

As no written request was made requesting a special meeting of the Exchange membership to consider the amendments, the Phlx Board on June 18, 1997 unanimously approved the proposed amendments for filing with the Commission.

Two of the most significant proposed changes to the By-Laws are reducing the size of the Board from 30 to 22 Governors and changing the composition of the Board to: 11 non-industry Governors, of whom at least 5 must be public Governors; 10 industry Governors;⁵ and a Chairman of the Board who will be the full time, paid Chief Executive Officer of the Exchange.⁶

The proposed By-Law amendments specify the composition of the 10 industry Governors as follows: 2 Equity Floor Industry Governors, 1 Equity Options Floor Specialist Governor and 1 Equity Options Floor Registered Options Trader Governor (all of whom must work on the Exchange Floor or be a general partner, executive officer or member associated with a member organization primarily engaged in business on the Exchange Floor); 1 Equity Options Floor Broker Governor (who must work on the Equity Options Floor); and 5 Off-Floor Governors.⁷ Except for the Chairman of the Board, all Governors are subject to term limits of two consecutive three year terms.⁸

The manner in which the Vice-Chairmen of the Board are selected also has been changed. Instead of the Vice-

⁴ In accordance with Phlx By-Law Article XXII, Section 22-2, the membership was notified of the proposed amendment by a memorandum dated June 4, 1997, and no written request for a special meeting of the Exchange membership was filed within the 10 day period allowed by the By-Law. Thereafter, on June 18, 1997, a membership petition was received by the Board pursuant to Phlx By-Law Article XXII, Section 22-1, which offered, in writing, certain proposed amendments to the By-Laws. On August 1, 1997, the petition was submitted to the membership for vote. The petition failed for lack of the required quorum.

⁵ See By-Law Article I, Section 1-1 (defining "industry," "non-industry," and "public").

⁶ See By-Law Article IV, Section 4-1 and By-Law Article V, Section 5-1. Various other amendments to the By-Laws have been made in connection with these changes. For instance, references to "President" have been changed to refer to the "Chief Executive Officer" or "Chairman of the Board" and revisions to the number of Board members necessary to effect certain Board actions have been made, e.g., in most cases where the affirmative vote of 15 of the current 30 Governors was required, the By-Law is changed to state that a majority vote is required.

⁷ See By-Law Article IV, Section 4-1.

⁸ See By-Law Article IV, Section 4-3.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities and Exchange Act Release No. 38809 (July 1, 1997), 62 FR 37109.

⁹ See supra note 3.

Chairmen being elected by the membership, the Board will now appoint the Off-Floor Vice-Chairman from among the Off-Floor Governors, and the On-Floor Vice-Chairman from among the On-Floor Governors. If there is a contest for On-Floor Vice-Chairman, a membership election will be held solely for the On-Floor Vice-Chairman.⁹

The proposed By-Law amendments make significant changes to the Nominating Committee's charter. The amendments specify that a majority of the Committee be non-industry Governors and authorize the Committee to select non-industry and public Governors, nominees for the industry Governor, committee chairs, and the Nominating Committee's successors, and to fill vacancies on the Board, all subject to Board approval.¹⁰

The number of members required to file independent Governor nominations will be increased from 10 to 50 members for an individual nomination, and 30 to 75 members for nominating an entire slate or portion thereof.¹¹

Substantial amendments relating to the Exchange's standing committees are proposed, including adding new standing committees of Automation, Compensation and Quality of Markets; reducing the size of standing committees to no more than 9 members except for floor committees, which may have no more than 12 members; requiring the committee chair and at least one other member to be a Governor; and revising the charter and composition of certain existing committees. Of particular note, the Executive Committee will be authorized, with Broad approval, to appoint committee members other than committee chairs, and to act on behalf of the Board when the Broad is not in session.¹²

The Arbitration Committee's composition will be reduced from 25 to 4 members and member controversies will be handled in the same fashion as public customer controversies.¹³

The Audit Committee will be composed of 3 public Governors and the Committee's charter will be significantly expanded to authorize the Committee's inquiries into all aspects of the Exchange's operations and finances, including regulatory matters.¹⁴

Business Conduct Committee ("BCC") appeals will be taken directly to the Board and the Disciplinary Review

Committee will be eliminated.¹⁵ The Exchange Enforcement staff will be entitled to petition the Board to appeal a BCC decision.¹⁶

Board Advisory Committees that hear appeals of standing committee decisions and are composed of 3 Governors, will now include at least 1 public Governor.¹⁷

By-Law Article IV, Section 4-8, is proposed to be amended so that no person shall participate in the "determination" as opposed to "adjudication" of any matter in which he is personally interested. This change is intended to expand the coverage of this provision, which pertains to disqualification of Governors from participation in Board actions. In addition, the Phlx is proposing to replace in its entirety Article XIV of the Certificate of Incorporation with a current provision of the Delaware General Corporation Law regarding contracts and transactions entered into by the Phlx in which a Governor, director, or officer has a financial interest.

Certain provisions of the Phlx Certificate of Incorporation and By-Laws are being amended in order to attract qualified candidates to serve on the Phlx Board and committees, and to clarify the responsibilities and obligations of those who are appointed. In this regard, new Article XVIII to the Phlx Certificate of Incorporation will limit the legal liability of Phlx Governors, as permitted under the Delaware General Corporation Law. In addition, current By-Law Article IV, Section 4-18, will be replaced entirely by a provision that provides broad and comprehensive indemnification coverage and rights to Governors, committee members and officers of the Exchange, and provides discretionary authority for the Board to indemnify agents and employees of the Exchange.

A number of other revisions to the By-Laws are proposed for the sake of organization or accuracy. For instance, the term "Corporation" has been changed throughout the By-Laws to "Exchange," and By-Law Articles VI and VII regarding Vice-Chairmen of the Board of Governors and Officers of the Corporation are being deleted in their entirety with the relevant sections being moved into Article V.

III. Discussion

After careful consideration, the Commission finds that the proposed

rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange. The Commission is approving this rule change proposal in order to enable the Phlx to better fulfill its responsibilities as a self-regulatory organization. The proposal institutes or strengthens existing provisions that should help the Phlx maintain and promote the highest ethical standards among its members and staff. The Commission finds that the proposed amendments to Phlx's By-Laws and Certificate of Incorporation are designed to assure fair representation of the Exchange's members in the selection of its directors and the administration of its affairs, and that the changes will enable the Exchange to better comply with the requirements of Section 6 in particular and the Act in general. Specifically, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁸ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interest.¹⁹

The Commission finds consistent with the Act the Phlx's reduction in size of the Board of Governors from 30 to 22 and changing the composition of the Board to: 11 non-industry governors (at least 5 of whom must be public Governors); 10 industry Governors; and a Chairman of the Board who will be the paid, full-time Chief Executive Officer of the Exchange. This change is consistent with Section 6(b)(3) of the Act²⁰ in that the Board will be more representative of the various constituencies that comprise the Exchange or are affected by its activities. The substantial revisions to the Phlx corporate governance structure are a result, in part, of an inquiry by a special outside committee charged with reviewing the organizational and governance structure of the Phlx. In addition, events at the Phlx over the past year have evidenced a need for a less insular and more diverse governance and committee structure for the Exchange to perform adequately its self-regulatory obligations.²¹ The above

¹⁸ 15 U.S.C. § 78f(b)(5).

¹⁹ In approving the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

²⁰ 15 U.S.C. § 78f(b)(3).

²¹ See *Phlx Appoints Special Committee to Investigate Casella-Ashton Ties*, Securities Week, September 23, 1996, at 1; *Phlx Chairman's Resignation May Have Raised More Questions than*

⁹ See By-Law Article IV, Section 4-2.

¹⁰ See By-Law Article III, Section 3-5.

¹¹ See By-Law Article III, Section 3-7.

¹² See By-Law Article X, Section 10-14.

¹³ See By-Law Article X, Section 10-8.

¹⁴ See By-Law Article X, Section 10-9.

¹⁵ See By-Law Article X, Section 10-11.

¹⁶ See By-Law Article XI, Section 11-3.

¹⁷ See By-Law Article XI, Sections 11-1 and 11-2.

noted changes, along with the increase in public representation on the Board, should enhance the Phlx's ability to uphold its responsibilities as a self-regulatory organization, and to act in a manner more consistent with the public interest. In addition, the amendment to reduce the size of the Board from 30 to 22 governors will enable the Board to perform its duties in a more efficient manner.

The Commission believes that the amendment to require 50% representation by public governors on the Board is particularly important in addressing the Exchange's governance problems, and should ensure better protection of investors and the public interest. Public governors are likely to have little or no stake in internal Exchange politics, and, if carefully selected, public governors should bring diverse experience and increased ethical sensitivity to the Board, thus enhancing the confidence of members and of the public in the Exchange's ability to govern its members and discharge its regulatory obligations appropriately.

The Exchange will continue the practice of having two Vice-Chairmen. However, one Vice-Chairman will now be appointed by the Board from among the Off-Floor Governors, and the other will be appointed by the Board from among the On-Floor Governors. Previously, these positions were elected by the membership. This change is a reasonable method of ensuring that there is balanced representation of two groups that can have divergent interests.

The Phlx is increasing the number of members required to support independent governor nominations from 10 to 50 for an individual nomination and from 30 to 75 members for nomination of a whole or partial slate. The Commission believes that this change will benefit the election process by requiring significant membership interest prior to a nomination.

The Phlx is changing the manner of the appointment of members to standing committees of the Board, designating the composition of certain committees, and creating new committees. The changes to committee structure and

procedures are important components of addressing the governance problems of the Exchange. Committees often are charged with implementing Board policies and directives, and they develop recommendations for Board consideration. An overhaul of the Board structure, without reform of the committee structure, would only partially rectify the governance problems at the Phlx. The proposed committee changes, discussed below, are designed to complement the Board changes by improving the structure of committees and selection of committee members. First, members of standing committees previously were selected by the Chairman of the Board with the approval of the Board of Governors. Under this proposal, members of standing committees will be selected by the Executive Committee, with the approval of the Board. The Commission believes that this method will better ensure the selection of qualified members of standing committees by removing selection from the sole control of the Chairman and vesting it in a more diverse group.

The charter and composition of the Nominating Committee has been changed to reduce its size from nine to seven members, with four of those members being non-industry governors, and at least two of the four being public governors (including the chair of the committee). The balance of the committee will comprise two floor governors and one off-floor governor. The Commission believes that the proposed change in composition and number of members on this committee strikes an appropriate balance in attempting to fairly represent the various interests of the Phlx membership and trading community, including investors.

The size of the Arbitration Committee has been reduced significantly from twenty-five members to four. Two of the committee members will be non-industry governors, with at least one being a public governor and one being the chair of the committee. The two other members will be an off-floor member and an on-floor member. Member controversies will be handled in the same fashion as public customer controversies. The Commission considers these changes to the Arbitration Committee to be an improvement over the Exchange's prior system of member dispute resolution, which at times resulted in delay in the resolution of disputes. While the streamlined committee should provide an effective forum for the resolution of member disputes, the Commission

intends to monitor the impact of these changes on arbitration at the Exchange.

The Commission finds consistent with the Act the significant expansion of the charter of the Audit Committee, authorizing this committee to inquire into all aspects of the Exchange's operations and finances, including regulatory matters. The committee will be composed of three public Governors. The expansion of the audit committee's charter will authorize the investigation and resolution of allegations of misconduct by governors, committee members, and Exchange staff. The Commission believes that it is important for the Phlx to have a committee with such broad investigatory powers, and approves the expansion of the committee's charter. A committee that is small and composed of independent governors should be better able to reach quick and unbiased decisions regarding alleged misconduct, or other matters pertinent to the Audit Committee's mission.

The Business Conduct Committee monitors compliance with the Act and the rules and regulations thereunder, as well as the rules and regulations of the Exchange. The Commission is approving the elimination of the Disciplinary Review Committee, in order that appeals from the Business Conduct Committee may be taken directly to the Board of Governors. In the Commission's view, this change eliminates an unnecessary level of appeal. The Commission also is approving an amendment to the By-Laws to include at least one public governor on the Advisory Committees that hear appeals of standing committee decisions because of the importance of having balanced views on these committees.

The Commission approves the creation of three Quality of Markets Committees representing the equity, equity and index option, and foreign currency option trading floors. The committees will provide advice and guidance to the Board on the Exchange's competitive position in new and existing markets, and the quality and depth of markets. The committees also will provide advice and guidance on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of the Exchange and systems operated by the Exchange. The Commission believes that the existence of these committees is an important improvement in the Phlx's review mechanism for assuring sound, fair markets.

The Exchange has modified the Certificate of Incorporation to include a

it Answered, Securities Week, October 21, 1996, at 1. See also Securities Exchange Act Release No. 38918 (August 11, 1997), *In the Matter of Stock Clearing Corporation of Philadelphia and Philadelphia Depository Trust Company*, Respondents, Order Instituting Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions (finding that the Stock Clearing Corporation of Philadelphia ("SCCP") and Philadelphia Depository Trust Company failed to comply with their respective rules and procedures, failed to file necessary proposed rule changes with the Commission, and, in the case of SCCP, violated Regulation T).

provision of the Delaware General Corporation Law requiring disclosure of certain information where a governor, director, or officer has a financial interest in a contract or transaction entered into by the Phlx. Pursuant to this provision, if appropriate disclosure is made, the contract entered into by the Phlx is not void or voidable solely by reason of the financial interest. The Exchange also has amended its by-laws to clarify when governors must be disqualified from participation in Board actions. Whereas previously governors were prohibited from participating in the "adjudication" of any matters in which they were personally interested, the applicable by-law now uses the term "determination." The use of this term is intended to broaden the universe of matters from which a governor could potentially be disqualified. While these amendments represent a first step in the clarification of the Exchange's conflict of interest rules, the Commission expects that the Exchange will further amend its by-laws to add more specific provisions that contain clear and detailed recusal, disclosure, and conflict of interest procedures for Board and committee members.

The Commission understands that the Phlx is formulating various orientation and educational materials, as well as a code of conduct, in order to brief persons who serve the Exchange in any official capacity, including governors, committee members, officers, employees, agents, members, member organizations, and persons affiliated with a member or member organization. The code of conduct reiterates the principles of business conduct which the Phlx expects to be maintained and followed, with the core principles being that the Exchange should conduct every aspect of its business in a fair and lawful manner, and that the Exchange should maintain a climate which encourages the fair and lawful conduct of business. These principles include the conduct of business in accordance with the federal securities laws and other applicable rules and regulations, the proper use of confidential information, disclosure of information and recusal from decision making, where appropriate, and provision of information to the Exchange where such information is reasonably requested.

The Commission supports the Phlx's strengthening of orientation and education materials in order that these persons better understand their mission, duties, and appropriate standards of conduct. The Commission understands that the Phlx is considering amending its by-laws to include compliance with the code of conduct, which at this time

is merely an Exchange policy. The Commission encourages the Phlx to submit such an amendment in order to formally reflect the important principles contained in the code of conduct, and looks forward to reviewing such an amendment.

Finally, The Commission approves the amendment of the by-laws and Certificate of Incorporation to include indemnification provisions, and supports the Exchange's goal of attracting qualified candidates for the Phlx Board of Governors through the inclusion of such provisions. The Commission also approves all non-substantive by-law changes made for the sake of organization and accuracy.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-PHLX-97-31) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-23009 Filed 8-28-97; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Bureau of Political-Military Affairs; Determination Under the Arms Export Control Act

[Public Notice 2596]

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Secretary of State has made a determination pursuant to Section 81 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: August 20, 1997.

Thomas E. McNamara,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 97-23002 Filed 8-28-97; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8-97-030]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee will meet to discuss various navigation safety matters affecting the Lower Mississippi River area. The meeting will be open to the public.

DATES: The meeting will be held from 10 a.m. to approximately 12 noon on Wednesday, September 10, 1997.

ADDRESSES: The meeting will be held in the basement GSA conference room of the Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT:

Mr. Monty Ledet, USCG, Administrator, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (m), Room 1341, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone (504) 589-4686.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 1 *et seq.* The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

The agenda for the meeting consists of the following items:

- (1) Approval of the minutes from the June 25, 1997 full Committee meeting.
- (2) Subcommittee Reports.
- (3) Old Business.
- (4) New Business.
- (5) Adjournment.

INFORMATION ON SERVICES FOR

INDIVIDUALS WITH DISABILITIES: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the Administrator, Mr. Monty Ledet, Marine Safety Division, Eighth Coast Guard District as soon as possible.

Dated: August 8, 1997.

T.W. Josiah, RADM, USCG,

Commander, Eighth Coast Guard District.

[FR Doc. 97-23070 Filed 8-27-96; 8:45 am]

BILLING CODE 4910-14-M

²² 15 U.S.C. § 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).