

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39053; File No. SR-Phlx-97-29]

### Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto, by the Philadelphia Stock Exchange, Inc. Relating to Tier I Listing Standards

September 11, 1997.

#### I. Introduction

On June 25, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to amend its Tier I listing standards.

The proposed rule change was published in the **Federal Register** on July 16, 1997.<sup>3</sup> No comments were received on the proposal. On July 22, 1997, the Phlx submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> This order approves the proposal, as amended, and solicits comment on Amendment No. 1.

#### II. Description of the Proposal

In October, 1996, the National Securities Markets Improvement Act of 1996<sup>5</sup> was signed into law. Among other provisions, the law amended section 18 of the Securities Act of 1933 ("Securities Act")<sup>6</sup> to provide for exclusive federal registration for "covered securities" which are those securities listed on the New York Stock Exchange ("NYSE"), American Stock Exchange ("Amex") or the National Market System of the Nasdaq Stock Market ("Nasdaq/NMS") or on any other national securities exchange designated by the Commission to have substantially similar listing standards to those markets. On March 31, 1997, the Phlx petitioned the Commission to adopt a rule that would find Phlx Tier I listing standards to be substantially similar to those of the NYSE, Amex or Nasdaq/

NMS and, therefore, entitle its listed Tier I securities to be considered covered securities.

The Commission recently proposed Rule 146(b) under section 18 of the Securities Act, which would designate certain securities as "covered securities" for purposes of this federal registration scheme.<sup>7</sup> In order for the Commission to designate the Phlx's Tier I securities as covered securities, however, it must first determine that its Tier I listing and maintenance standards are substantially similar to those of either the NYSE, Amex or Nasdaq/NMS. The Commission has noted that it preliminarily believes that the Phlx's Tier I standards differ in three areas from those of the NYSE, Amex, or Nasdaq/NMS. By this filing, the Phlx is amending its rules to make them substantially similar to those of the Amex in those three specified areas as set forth below.

First, Phlx Rule 803(e) is being amended to adopt additional listing standards for index warrants, currency warrants and currency index warrants. New subsection (2) requires that warrants have a term of between one and five years from the date of issuance. New subsection (3) imposes a minimum public distribution and market value requirement of 1,000,000 warrants with at least 400 public warrant holders and a minimum aggregate market value of \$4,000,000. Finally, new subsection (9) requires that index warrants, currency warrants and currency index warrants be cash-settled in U.S. dollars.<sup>8</sup>

Second, the pre-tax income requirement for issuers of "other securities" in Rule 803(f)(2) is increased from \$100,000 in three of the four prior fiscal years to \$750,000 in its last fiscal year or in two of its last three fiscal years.<sup>9</sup> Other securities are hybrid securities which have features common to both equity and debt securities, yet do not fit within the traditional definitions of either.

Finally, Exchange Rule 810(a), which contains the maintenance standards for Tier I securities, is amended to add maintenance standards for bonds, notes and debentures. The proposed Rule requires that debt securities maintain an aggregate market value or principal amount of bonds that are publicly held of \$400,000 and requires the issuer to be

able to meet its obligations in the listed debt securities. Also, for any debt security convertible into a listed equity security, the debt security will be reviewed when the underlying equity security is delisted and will be delisted when the underlying equity security is no longer subject to real-time trade reporting in the United States. In addition, if common stock is delisted for violation of any of the corporate governance criteria in Exchange Rules 812 through 899, the Exchange also will delist any listed debt securities convertible into the common stock.<sup>10</sup>

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6<sup>11</sup> and the rules and regulation thereunder. Specifically, the Commission finds that the proposed rule change is consistent with the section 6(b)(5)<sup>12</sup> requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.<sup>13</sup>

The Commission believes that the amendments to the Phlx's listing and maintenance standards should protect investors in a number of ways. First, the addition of minimum distribution and aggregate market value requirements to the listing standards for currency, currency index and stock index warrants will help to ensure the depth and liquidity of the market for warrants listed on the Exchange. In addition, limiting the term of maturity of these products to no greater than five years should protect investors from the credit risk of the issuer's ability to pay at the expiration of the warrant term. Second, increasing the pre-tax income requirement for issuers of "other securities" will protect investors by increasing the minimum financial requirements for issuers of "other securities," thus reducing the likelihood of default. Third, the addition of maintenance requirements for bonds, notes and debentures protects investors

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

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

<sup>3</sup> Securities Exchange Act Release No. 38825 (July 9, 1997), 62 FR 38180 (July 16, 1997).

<sup>4</sup> See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to David Sieradzki, Attorney, SEC (July 17, 1997) ("Amendment No. 1"). In Amendment No. 1, the Phlx added a new subsection (9) to Rule 803(e) requiring that currency, currency index and stock index warrants be cash-settled in U.S. dollars.

<sup>5</sup> Pub. L. 104-290, Stat. 3416 (1996).

<sup>6</sup> 15 U.S.C. 77s.

<sup>7</sup> Securities Exchange Act Release No. 38728, Securities Act Release No. 7422 (June 10, 1997), 62 FR 32705 (June 17, 1997).

<sup>8</sup> See Amendment No. 1, *supra* note 4. These provisions are substantially similar to sections 106 (b) and (c) of the Amex Company Guide.

<sup>9</sup> This provision is substantially similar to section 107 and, by reference, section 101(b) of the Amex Company Guide.

<sup>10</sup> These provisions are substantially similar to section 1003 (b)(iii) and (e) of the Amex Company Guide.

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b) (5).

<sup>13</sup> In approving these rules, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation, 15 U.S.C. 78c(f).

by helping to ensure that issuers of such securities continue to meet minimum financial standards and maintain the ability to make interest and principal payments as they come due. Finally, the review of a convertible bond when the underlying security is delisted and the requirement that convertible debt be automatically delisted if the underlying security is delisted for violation of corporate governance rules will help to ensure that issuers will be unable to avoid the effect of a delisting of an equity security by continuing to list a bond convertible into the delisted security.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 does not change the nature of the proposal, but merely codifies a current Exchange practice of requiring that currency, currency index and stock index warrants be cash-settled in U.S. dollars. Further, the Commission notes that the original proposal was published for the full 21-day comment period and no comments were received by the Commission. Accordingly, the Commission believes it is consistent with sections 19(b)(2) and 6(b)(5) of the Act to approve Amendment No. 1 to the Exchange's proposal on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submissions 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 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-97-29 and should be submitted by October 10, 1997.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-Phlx-97-29) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-24864 Filed 9-18-97; 8:45 am]

BILLING CODE 8010-01-M

#### SMALL BUSINESS ADMINISTRATION

##### Region IV Jacksonville, Florida District; Advisory Council Meeting, Public Meeting

The U.S. Small Business Administration Jacksonville, Florida District Advisory Council will hold a public meeting from 12:00 p.m. to 2:00 p.m., October 9, 1997, at the District Office conference room, 7825 Baymeadows Way, Suite 100-B, Jacksonville, Florida, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Claudia D. Taylor, U.S. Small Business Administration, 7825 Baymeadows Way, Suite 100-B, Jacksonville, Florida 32256-7504, telephone (904) 443-1933.

Dated: September 12, 1997.

**Eugene Carlson,**

*Associate Administrator, Office of Communications & Public Liaison.*

[FR Doc. 97-24889 Filed 9-18-97; 8:45 am]

BILLING CODE 8025-01-U-M

#### SMALL BUSINESS ADMINISTRATION

##### Region I Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Augusta, Maine, will hold a public meeting at 9:30am on Tuesday, September 23, 1997, in the Edmund S. Muskie Federal Building, Room 512, 40 Western Avenue, Augusta, Maine, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Roy Perry, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine,

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a) (12).

04330, telephone number 207-622-8242.

**Eugene Carlson,**

*Associate Administrator, Office of Communication & Public Liaison.*

[FR Doc. 97-24888 Filed 9-18-97; 8:45 am]

BILLING CODE 8025-01-U

#### OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

##### Notice of Meeting of the Industry Sector Advisory Committee for Electronics and Instrumentation (ISAC 5)

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of meeting.

**SUMMARY:** The Industry Sector Advisory Committee for Electronics and Instrumentation (ISAC 5) will hold a meeting on October 15, 1997 from 9:00 a.m. to 2:00 p.m. The meeting will be open to the public from 9:15 a.m. to 9:45 a.m. and closed to the public from 9:00 a.m. to 9:15 a.m. and 9:45 a.m. to 2:00 p.m.

**DATES:** The meeting is scheduled for October 15, 1997, unless otherwise notified.

**ADDRESSES:** The meeting will be held at the Department of Commerce in Room 1863, located at 14th Street and Constitution Avenue, NW., Washington, DC, unless otherwise notified.

**FOR FURTHER INFORMATION CONTACT:** Margaret Donnelly, Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230, (202) 482-5466 or Bill Daley, Office of the United States Trade Representative, 600 17th St. NW., Washington, DC 20508, (202) 395-6120.

**SUPPLEMENTARY INFORMATION:** The ISAC 5 will hold a meeting on October 15, 1997 from 9:00 a.m. to 2:00 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting in will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion