

the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549-0609. 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 will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR-CBOE-17 and should be submitted by June 29, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the act and the rules and regulations thereunder applicable to a national securities exchange⁶ and, in particular, the requirements of Section 6(b)(5) of the Act.⁷ Specifically, the Commission finds that the proposed rule change will make the Exchange's approval process for membership applications consistent with the Exchange's generally applicable committee voting process. In addition, the Commission believes that clarifying that membership owners are permitted to waive the notice requirement relating to the exercise of an Authorization to Sell a membership will help ensure that members are aware of this right.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after date of publication of the notice of filing thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.⁸ Accelerated approval will permit the Exchange to use its generally applicable committee voting process in approving membership applications, and will put membership owners on notice of their right to waive the notice requirement relating to Authorizations to Sell, without undue delay. Accordingly the Commission finds that it is consistent

with Section 6(b)(5) of the Act⁹ to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2001-17), as amended, is hereby approved on an accelerated basis.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44382; File No. SR-Phlx-2001-55]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Short Sales

June 1, 2001.

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 May 16, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items the Phlx has prepared. 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 Phlx Rule 455, Short Sales, by adding new Supplementary Material .01. The text of the proposed rule change is below, with new language in italics.

Rule 455. Short Sales

(a)-(d) No change.

Supplementary Material

.01 This Rule 455 shall not prohibit any transaction or transactions which the Commission, upon written request or upon its motion, exempts, either unconditionally or on specified terms and conditions.

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

Rule 10a-1 under the Act³ addresses short selling. Subsection (f) of Rule 10a-1 provides that Rule 10a-1 shall not prohibit any transaction or transactions that the Commission, upon written request or upon its own motion, exempts, either unconditionally or on specified terms and conditions.

Phlx Rule 455 also addresses short selling. proposed Supplementary Material .01 of Phlx Rule 455 would track the language of Rule 10a-1(f) to clarify that nothing in Phlx Rule 455 prohibits any transaction or transactions that the Commission has exempted from Rule 10a-1 pursuant to Rule 10a-1(f).

2. Statutory Basis

The Phlx believes the proposed rule change is consistent with the provisions of Section 6(b) of the Act⁴ and furthers the objectives of Section 6(b)(5) of the Act⁵ in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by clarifying and describing clearly in the Phlx's rules that nothing in Phlx Rule 455 prohibits any transaction or transactions which the Commission, upon written request or upon its own motion, has exempted pursuant to Rule 10a-1(f).

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not

⁶ In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 15 U.S.C. 78f(b)(5).

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 17 CFR 240.10a-1. See also Securities Exchange Act Release No. 42037 (October 20, 1999), 64 FR 57996 (October 28, 1999) (Concept Release on Short Sales).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act.

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

The Phlx neither solicited nor received any written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁶ and subparagraph (f)(1) of Rule 19b-4 thereunder⁷ because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendment, all written statement 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 will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR-Phlx-2001-55 and should be submitted by June 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44386; File No. SR-Phlx-2001-45]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change Amending Rule 930

June 4, 2001.

On April 20, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 930 to add paragraph (k).

Rule 930(k) relates to the Exchange's ability to allow a member who leases a membership ("lessee") to pay past-due fees owed to the Exchange by the lessor under a lease agreement, on behalf of the lessor. Rule 930(k) states that the Exchange is a third party beneficiary of the lease agreement, and shall have the right to permit payment by a lessee of past-due fees owed to the Exchange by the lessor. The Rule further states that should the lessee pay such past due amounts, the lessee shall provide written notice to the lessor and the Exchange. Once the lessee has elected to make such payments, the lessee may continue to make such payments for a period of up to three months and set off such amounts, with notice to the Exchange and lessor against amounts due the lessor by the lessee. Furthermore, Rule 930(k) states that notwithstanding the terms of the lease agreement, a lessee will not be considered in default of the lease agreement solely by virtue of having elected to make such payments. The Exchange also amended Rule 930 to make certain minor technical amendments to the text of the rule in order to make the various paragraphs contained in the rule more consistent.

The proposed rule change was published for comment in the **Federal Register** on May 2, 2001.³ The

Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange⁴ and, in particular, the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with the requirement of Section 6(b)(5)⁶ because it is designed to promote just and equitable principles of trade and to protect investors and the public interest by enabling lessees to continue trading on the Exchange even when their respective lessors fail to pay fees owed the Exchange when due.

The Commission is not required under Section 19(b)(2) of the Act⁷ to find that a proposed rule change by a self-regulatory organization is lawful under state corporation law; in approving this proposal, the Commission is relying on the Phlx's representation that it has the general power under applicable provisions of Delaware law to modify Rule 930 by adding paragraph (k). The Commission is also relying on the Phlx's representations that proposed Rule 930(k) is permissible under Pennsylvania contract law. The Commission has not independently evaluated the accuracy of Phlx's representations regarding Delaware or Pennsylvania law.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Phlx-2001-45) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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⁴ In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 44220 (April 25, 2001), 66 FR 22059.

⁶ 15 U.S.C. 78s(b)(3)(A)(i).

⁷ 17 CFR 240.19b-4(f)(1).