

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 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 also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2002-83 and should be submitted by January 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-457 Filed 1-9-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47118; File No. SR-Phlx-2002-34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 and No. 2 thereto by the Philadelphia Stock Exchange, Inc. to Adopt a Seat Transaction Policy and Add Supplementary Material to Phlx Rule 708

January 2, 2003.

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 June 21, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "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 Exchange. On December 16, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.³ On December 27, 2002,

the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a Seat Transaction Policy for Governors, Committee Members and Associated Member Organizations ("Seat Transaction Policy" or the "Policy"), described in further detail below, which, if approved, will form a part of the Exchange's Code of Conduct for Governors and Committee Members (the "Governance Members Code of Conduct"), which prohibits Exchange Governors, Committee Members and Member Firms associated with them from engaging in purchases or sales of Exchange "Seats" (as further defined below), except in accordance with the Policy. The Policy generally restricts such Seat Transactions if a Governance Member is in possession of Material Confidential Information⁵ of the Exchange, except in accordance with the procedures set forth in the Policy. In addition, the Exchange proposes to amend Phlx Rule 708, *Acts Detrimental to the Interest and Welfare of the Exchange*, by adding commentary that provides notice to members and member organizations that any violation of the Exchange's Seat Transaction Policy constitutes a violation of Phlx Rule 708. Below is the text of the proposed rule change. Proposed new language is in italics.

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Philadelphia Stock Exchange

Code of Conduct for Board Members and Committee Members

Articles I. thru IV. No change.

Article V. Seat Transaction Policy for Governors and Committee Members

Chinese Wall

A Chinese Wall, also known as an Information Barrier, is an internal written policy of an Exchange or PBOT member firm or member organization that is designed to prevent the

2002 ("Amendment No.1"). Amendment No. 1 replaces Phlx's original proposal in its entirety.

⁴ See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated December 27, 2002 ("Amendment No. 2"). Amendment No. 2 makes certain technical changes to the proposed rule change.

⁵ See definition of Material Confidential Information, below.

disclosure by a Governor or Committee Member associated with such Exchange or PBOT member firm or member organization, or FCO Participant or FCO Participant Organization (collectively, "Member Organizations"), of non-public, confidential or otherwise sensitive Exchange or PBOT information possessed by such Governor or Committee Member to any third party, including, without limitation, any employee, agent, associated person, representative or consultant of such Member Organization, as the case may be.

Material Confidential Information

Material Confidential Information includes any information that is proprietary to the Exchange, which a reasonable person would consider significant or important when purchasing or selling a Seat.

Seat Transaction

A transaction pursuant to which a Covered Person or a Member Organization purchases or sells a Seat.

Special Committee on Seat Transactions

The Special Committee on Governor and Committee Member Seat Transactions ("Special Committee") is a Special Committee of the Board having jurisdiction over all Seat Transactions by Covered Persons or Member Organizations.

Window Period

A Window Period is a period of time, imposed by the Special Committee on Seat Transactions, during which a Covered Person or associated Member Organization may not engage in a Seat Transaction, such as a period of time prior to the announcement of new products to be traded on the Exchange, prior to the announcement of a corporate transaction involving the Exchange, prior to the announcement of certain regulatory actions affecting the Exchange, prior to the announcement of an increase or decrease in fees to be paid by the Exchange members, or prior to the announcement of any significant action by the Board of Governors or any Committee.

1. Responsibility for Compliance

(a) Each Covered Person⁶ bears personal responsibility for complying with this Seat Transaction Policy. Each Member Organization associated with a Covered Person must also comply with this Seat Transaction Policy. Where a

⁶ As used in the Seat Transaction Policy, "Covered Person" shall mean any person who serves the Exchange as a Board Member or as a Committee Member.

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated December 13,