

“Chinese Wall” or information barrier should be regarded as being sufficient to justify the Special Committee to permit a Member Organization or person affiliated therewith, who is not a Covered Person and who is not in possession of Material Confidential Information to proceed with the Seat Transaction; (3) whether the Seat Transaction may proceed only after approved disclosures of Material Confidential Information to the other party in the Seat Transaction and, in such event, whether a confidentiality agreement is needed to protect any Material Confidential Information from being disclosed; or (4) whether the Seat Transaction can not proceed at the current time or during certain Window Periods established by the Special Committee.

#### 5. Consequences of Violations of Seat Transaction Policy

Violations of this Seat Transaction Policy will result in appropriate disciplinary action in accordance with Exchange Rules (which may include, without limitation, Phlx Rule 708). In addition, where it has been determined that applicable laws, rules or regulations may have been violated in connection with a violation of this Seat Transaction Policy, appropriate disciplinary action may include legal action by the Exchange or PBOT or the referral of the matter to an appropriate governmental agency.

#### 6. Right of Appeal of Special Committee Decisions

Decisions of the Special Committee may be appealed by the Covered Person or associated Member Organization to the Board of Governors as if such decision were rendered by a Standing Committee of the Board of Governors, in accordance with Phlx By-Laws 11-1(a) and 11-2. The decision on review by the advisory committee on appeals of the Board of Governors pursuant to Phlx By-Law 11-2 shall constitute a final decision by the Exchange, upon the acceptance by the Board of Governors of the advisory opinion of such advisory committee on appeals.

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#### Rule 708. Acts Detrimental to the Interest or Welfare of the Exchange

A member, member organization, or person associated with or employed by a member or member organization shall not engage in acts detrimental to the interest or welfare of the Exchange.

##### Commentary:

.01 Acts which could be deemed detrimental to the interest or welfare of

the Exchange include, but are not limited to, the following:

(a) thru (e) No change.  
(f) any action by a member of the Board of Governors or any Exchange Committee, or by any member organization associated with such member, which contravenes the Seat Transaction Policy contained in Article V of the Code of Conduct for Governors and Committee Members.

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#### II. Self-Regulatory Organization's Statement Regarding the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 Exchange 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 (i) To amend the Exchange's Code of Conduct for Governors and Committee Members, by adopting a Seat Transaction Policy, which generally prohibits members of the Phlx Board of Governors or of any Exchange Committee (a “Governance Member”)<sup>7</sup> and any Phlx member firm or corporation associated with such Governance Member (a “Member Organization”) from engaging in purchases or sales of Exchange memberships, except in compliance with the Policy, and (ii) to codify the Exchange's policy that a violation of the Exchange's Seat Transaction Policy by a Governance Member or any Member Organization constitutes a violation of Phlx Rule 708, *Acts Detrimental to the Interest and Welfare of the Exchange*, and such conduct is therefore subject to disciplinary action by the Exchange.<sup>8</sup>

<sup>7</sup> The Exchange notes that the Policy uses the term “Covered Person” instead of the term “Governance Member,” which is used here. These terms are synonymous.

<sup>8</sup> The Exchange notes that Phlx Rule 708, as well as Phlx Rule 707 (pertaining to just and equitable principles of trade), could apply to a wide variety of situations. The specific scenarios listed in the commentary to Phlx Rules 707 and 708 are intended to illustrate some, but not all, of the situations that violate these Rules. As stated in the

The proposed rule change would establish procedures for the purchase or sale<sup>9</sup> of a Phlx membership, foreign currency option (“FCO”) participation, or Philadelphia Board of Trade (“PBOT”) membership (each an “Exchange Seat” or a “Seat”), by a Governance Member or Member Organization. In general, the Policy prohibits such Seat Transactions while such Governance Member or Member Organization possesses “Material Confidential Information” of the Exchange except insofar as such transaction complies with the Policy. In addition, proposed commentary to Phlx Rule 708 would make clear that violations of the Policy may constitute an act detrimental to the interests and welfare of the Exchange and therefore that rule. Accordingly, both the Seat Transaction Policy and the proposed amendment of commentary to Phlx Rule 708 would, pursuant to Phlx By-Laws 18-1 and 18-3, expressly allow the Exchange to bring a disciplinary action, as appropriate, against Governance Members and Member Organizations for violations of the Seat Transaction Policy. Neither the Seat Transaction Policy nor the proposed amendment of Phlx Rule 708, Commentary .01 would apply to Exchange members other than Governors, Committee Members and their associated Member Organizations.

##### Background

The Exchange adopted the Seat Transaction Policy as an amendment to the Governance Members Code of Conduct. The Seat Transaction Policy recognizes that Governance Members may be subject to conflicting duties whenever they engage in a transaction to purchase or sell an Exchange Seat.

On the one hand, a Governance Member, or a Member Organization for which such Governor is an officer or director, must own or lease an Exchange

Commission's order approving Phlx Rule 708, the Exchange has determined, for various reasons, to list certain conduct that violates Phlx Rule 708, but not others. See Exchange Act Release No. 33850 (April 1, 1994), 59 FR 16874 (April 8, 1994) (File No. SR-Phlx-93-53). Similarly, the Exchange also notes that it has previously amended the commentary to Phlx Rule 707 in order to add certain violations of the Phlx Code of Conduct to the non-exclusive list of potential violations of Phlx Rule 707. See, e.g., Exchange Release No. 43739 (December 19, 2000) 65 FR 82440 (December 28, 2000) (File No. SR-Phlx-00-94) (order approving proposal to prohibit members, member organizations, and persons associated with or employed by a member or member organization from engaging in harassment or other improper behavior in connection with listing or competitive practices).

<sup>9</sup> The Governance Members Code of Conduct provisions described herein would only address the purchase or sale of a Seat, not other transactions involving Seats, such as lease transactions.