

audit committee. As noted above, these standards are required by Commission Rule 10A-3(b)(2)-(5).

*General Exemptions.* Phlx Rule 849(c)(1)-(7) provides a number of exemptions from Phlx Rule 849, which are provided for in Commission Rule 10A-3(c).

*Definitions.* Phlx Rule 849(e) defines a number of terms used in Phlx Rule 849, including the terms "affiliate" and "control," and also including the term "board of directors" in the case of foreign private issuers with a two-tier board system or a limited partnership or limited liability company where such entity does not have a board of directors or equivalent body.

*Opportunity to Cure Defects.* Phlx Rule 849(f) provides that a listed issuer shall have the opportunity provided for in Phlx Rule 811 (see below) to cure any defects that would be the basis for delisting under Phlx Rule 849(a) before the imposition of such delisting. It also provides that if a member of an audit committee ceases to be independent in accordance with the requirements of Phlx Rule 849 for reasons outside the member's reasonable control, that person, with notice by the issuer to the Exchange, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the member to be no longer independent.

*Notification of Noncompliance.* Proposed Phlx Rule 849(g) requires listed issuers to notify the Exchange promptly after an executive officer of the listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of Phlx Rule 849.

*Audit Committee Charter.* Proposed Phlx Rule 849(h) requires the board of directors to adopt and approve a formal written charter for the audit committee, and requires the audit committee to review and reassess the adequacy of the formal written charter on an annual basis. The proposed rule details the required content of the charter.

*Expertise Requirement of Audit Committee Members.* Proposed Phlx Rule 849(i) requires each member of the audit committee to be financially literate or become financially literate within a reasonable period of time after his or her appointment to the audit committee. It requires at least one member of the audit committee to have accounting or related financial management expertise.

*Written Affirmation.* Proposed Phlx Rule 849(j) provides that as part of the initial listing process, and with respect

to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each listed company should provide the Exchange written confirmation regarding determinations of directors' independence, the financial literacy of audit committee members, the determination that at least one of the audit committee members has accounting or related financial management expertise, and the annual review and reassessment of the adequacy of the audit committee charter.

*Related Party Transactions.* Proposed Phlx Rule 849(k) replaces the second sentence of current Phlx Rule 849. It defines "related party transactions" and requires issuers to conduct an appropriate review of all such transactions on an ongoing basis. It also requires all such transactions to be approved by the audit committee or another independent body of the board of directors.

*Commentary.* Commentary sections 1-4 replicate the Instructions adopted by the Commission as part of Rule 10A-3, and are designed to clarify the applicability of certain other Rule 849 provisions.

#### *Rule 811, Delisting Policies and Procedures.*

Rule 811, Delisting Policies and Procedures, is proposed to be amended by the addition of introductory text prior to subsection (a). The new language would provide a process pursuant to which a company identified by Exchange staff as being below the Exchange's continued listing criteria would be provided an opportunity to provide Exchange staff with a plan advising the Exchange of action the company has taken, or will take, that would bring it into compliance with the continued listing standards within three months (the "Plan"). The company would have 30 days from receipt of a letter from the Exchange notifying the company of the deficiency to submit the plan. The Exchange's Allocation, Evaluation and Securities Committee, within 45 days of receipt of the proposed plan, will determine whether the company has made a reasonable demonstration of an ability to regain compliance with the continued listing standards within the three month period. If Exchange staff accepts the Plan, the three-month Plan period will commence on the date the issuer is notified of such acceptance. If the company does not show progress consistent with the Plan, it may proceed with delisting. If the company does not meet continued listing standards at the end of the three month Plan period, the

Exchange will promptly initiate delisting procedures.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, Amex believes the proposed rule change is designed to increase investor protection by promoting accountability, transparency and integrity by listed companies.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).