

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48836; File No. SR-Phlx-2003-51]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Listing Standards Regarding Issuer's Audit Committees and Delisting Procedures

November 25, 2003.

I. Introduction

On July 14, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("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 Phlx Rule 849, Audit Committee/Conflicts of Interest, and Phlx Rule 811, Delisting Policies and Procedures.

The provisions in the proposed rule change mostly are intended to comply with the requirements mandated by Section 10A(m) of the Act³ and Rule 10A-3 thereunder.⁴ Additional changes in the proposal relate to audit committee charters, audit committee composition requirements, audit committee approval of related party transactions, and revisions to the Exchange's delisting rule. The Exchange also committed to adopt additional listing policies and requirements pertaining to issuer corporate governance.

The proposed rule change was published for comment in the **Federal Register** on October 16, 2003.⁵ The Commission received no comments on the proposal. On November 20, 2003, the Phlx submitted an amendment to the proposed rule change.⁶ This order approves the proposed rule change, publishes notice of Amendment No. 1,

and approves Amendment No. 1 on an accelerated basis.⁷

II. Discussion

After careful review, 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.⁸ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁹ which requires, among other things, that the Phlx's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Moreover, the Commission believes that the Exchange's proposal to add the new requirements concerning audit committees is appropriate and consonant with Section 10A(m) of the Act and Rule 10A-3 thereunder relating to audit committee standards for listed issuers. The Commission notes that the Phlx intends to file an additional rule proposal relating to other corporate governance listing standards.¹⁰

Furthermore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹¹ to approve 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**. In Amendment No. 1, the Phlx expanded, with respect to investment companies, the scope of the proposed provision regarding complaint procedures. Rule 10A-3 requires audit committees to establish procedures for "the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters."¹² The amended Phlx proposal would require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

This revision responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting rules to comply with Rule 10A-3, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.¹³ The Commission believes that it is appropriate to accelerate approval of this amendment, because it conforms the rule text to similar rules of the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were approved by the Commission,¹⁴ and the amendment raises no new substantive issues.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 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 filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2003-51 and should be submitted by December 24, 2003.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹⁵, that Amendment No. 1 is approved on an accelerated basis, and that the proposed rule change (File No. SR-Phlx-2003-51) be, and it hereby is, approved.

¹³ See Securities Exchange Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A-3).

¹⁴ See Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR-NYSE-2002-33 and SR-NASD-2002-141).

¹⁵ 15 U.S.C. 78s(b)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78j-1(m).

⁴ 17 CFR 240.10A-3.

⁵ See Securities Exchange Act Release No. 48601 (October 8, 2003), 68 FR 59666 ("Notice").

⁶ See letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx, to Ira L. Brandriss, Special Counsel, Division of Market Regulation, Commission, dated November 19, 2003 ("Amendment No. 1"). In Amendment No. 1, with respect to investment companies, the Phlx expanded the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

⁷ Rule 10A-3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. By the Commission approving the proposed rule change, the Exchange can comply with this deadline.

⁸ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See Notice at note .

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 240.10A-3(b)(3)(ii).