

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47389; File No. SR-PHLX-2002-34]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Adopt a Seat Transaction Policy and Add Supplementary Material to PHLX Rule 708

February 21, 2003.

On June 21, 2002, 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 adopt a Seat Transaction Policy for Governors, Committee Members and Associated Members Organizations ("Seat Transaction Policy" or the "Policy") and in addition, the Exchange proposes to amend Phlx Rule 708: *Acts Detrimental to the Interest and Welfare of 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 proposed rule change was published for comment in the **Federal Register** on January 10, 2003.⁵ The Commission received no comments on the proposed rule change.

The Commission has carefully reviewed the Phlx's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,⁶ and with the provisions of Section 6(b) of the Act.⁷ In particular, the Commission finds the proposal is consistent with Sections 6(b)(5),⁸ in that it is designed to prevent fraudulent and manipulative acts and

practices and with Section 6(b)(6),⁹ in that it is designed to appropriately discipline members for violation of the rules of the Exchange.

The Commission notes that the Exchange adopted the Policy to establish procedures to govern the purchase or sale 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 ("Covered Person").¹⁰ The Policy generally restricts a Covered Person who is in possession of Material Confidential Information¹¹ of the Exchange to engage in purchases or sales of Exchange Seats, except in accordance with the procedures set forth in the Policy.¹² At the time the Policy was adopted, the Phlx recognized that Covered Persons may be subject to conflicting duties whenever they engage in a transactions to purchase or sell an Exchange Seat. The Phlx was concerned that, as a result of a Covered Person's position on the Board or on an Exchange Committee, that Person may learn Material Confidential Information regarding the Exchange that may affect the value of all Exchange Seats, or the value of particular Exchange Seats. The Commission believes that adopting the Exchange's Policy will enable the Exchange to resolve the tension between a Covered Person's legitimate business needs to purchase or sell Exchange Seats from time to time and the Exchange's legitimate business interest in preventing disclosure of Material Confidential Information to anyone involved in a Seat Transaction.

In addition, the Phlx has adopted an amendment to Phlx Rule 708, *Acts Detrimental to the Interest and Welfare of the Exchange*, which provides notice and makes clear to Covered Persons that any violation of the Policy constitutes an act detrimental to the Exchange, and therefore is a violation of Phlx Rule 708.

The Commission believes that adopting the proposed amendments would accommodate both of these

interests by allowing a Special Committee to review the facts surrounding a seat transaction and, if necessary, to impose conditions on the seat transaction in order to prevent or limit disclosure of Material Confidential Information of the Exchange to third parties.

The Commission believes that the Policy as specified in the Governance Members Code of Conduct, and Phlx Rule 708, as amended, should discourage fraudulent and manipulative acts and practices in connection with the purchase and sale of Exchange Seats by Covered Persons, who owe a fiduciary duty to the Exchange and its Members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹³ that the proposed rule change (SR-Phlx-2002-34), as amended, is approved.

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

Margaret McFarland,
Deputy Secretary.

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DEPARTMENT OF STATE

[Public Notice 4266]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, March 12, 2003 in Room 6103 of the U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001. The primary purpose of the meeting is to prepare for the Eighth Session of International Maritime Organization (IMO) the Sub-Committee on Bulk Liquids and Gases to be held at the IMO Headquarters in London, England from March 24, 2003 to March 28, 2003.

The primary matters to be considered include:

- Matters related to the probabilistic methodology for oil outflow analysis
- Review of Annex I of International Convention for the Prevention of Pollution From Ships (MARPOL 73/78)
- Review of Annex II of MARPOL 73/78
- Evaluation of safety and pollution hazards of chemicals and preparation of consequential amendments
- Amendments to requirements on electrical installations in the

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, 2002 ("Amendment No. 1").

⁴ See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Florence Harmon, Senior Special Counsel, Division, Commission, dated December 27, 2002 ("Amendment No. 2").

⁵ See Securities Exchange Act Release No. 47118 (January 2, 2003), 68 FR 1500 (January 10, 2003).

⁶ In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition and capital formation, 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(6).

¹⁰ A Covered Person includes: Exchange Governors, Committee Members and Member Firms for which such Governor is an officer or director, who own or lease an Exchange Seat to conduct business on the Exchange.

¹¹ Material Confidential Information is confidential and proprietary to the Exchange and may not, under the Governance Members Code of Conduct, Exchange policy, and applicable law, be disclosed or used for person gain when purchasing or selling a seat.

¹² Neither the Policy nor the proposed amendment to Phlx Rule 708 would apply to Exchange members other than Governors, Committee Members and their associated Member Organizations.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).