Proposed Rule Change by Philadelphia Stock Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial Amendment Withdrawal

Section 19(b)(2) Section 19(b)(3)(A) Section 19(b)(3)(B)

Rule

Pilot Extension of Time Period for Commission Action Date Expires

19b-4(f)(1) 19b-4(f)(4)
19b-4(f)(2) 19b-4(f)(5)
19b-4(f)(3) 19b-4(f)(6)

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Angela Last Name Dunn
Title Director
E-mail angela.dunn@phlx.com
Telephone (215) 496-5692 Fax (215) 496-6729

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 10/20/2005
By Cynthia Hoekstra Director

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Cynthia Hoekstra,
<table>
<thead>
<tr>
<th>Exhibit 1 - Notice of Proposed Rule Change</th>
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<tbody>
<tr>
<td>The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3).</td>
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<th>Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications</th>
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<tr>
<td>Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.</td>
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<th>Exhibit 3 - Form, Report, or Questionnaire</th>
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<td>Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.</td>
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<th>Exhibit 4 - Marked Copies</th>
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<td>The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.</td>
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<th>Exhibit 5 - Proposed Rule Text</th>
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<td>The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.</td>
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<th>Partial Amendment</th>
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<tr>
<td>If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission’s permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.</td>
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</table>
1. **Text of the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\) and Rule 19b-4 thereunder,\(^2\) proposes to amend Exchange By-Law Article X, Sections 10-9 (a) - (b) to: (i) allow the Board of Governors the ability to increase the size of the Audit Committee beyond its current three persons to a maximum of five persons; and (ii) to require the members of the Audit Committee to be independent directors. Additionally, the proposed amendment incorporates enhanced Audit Committee responsibilities.

A notice of the proposed rule change for publication in the [Federal Register](https://www.federalregister.gov/) is attached hereto as Exhibit 1 and the text of amended Exchange By-Law Article X, is attached hereto as Exhibit 5.

2. **Procedures of the Self-Regulatory Organization**

The Board of Governors approved the proposal for filing with the Securities and Exchange Commission ("Commission") on April 21, 2004 and September 7, 2005. Questions and comments on the proposed rule change may be directed to Angela Saccomandi Dunn, Director and Counsel at (215) 496-5692, or Edith Hallahan, Senior Vice President and Deputy General Counsel, at (215) 496-5179.

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3. **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

   a. **Purpose**

   The purpose of the proposed rule change is to strengthen the composition and charter of the Audit Committee by increasing the pool of candidates eligible to serve, which may bring additional expertise to the Committee, as well as to codify more of its responsibilities. The Exchange believes that expanding the size of the Audit Committee to permit (but not mandate) additional Committee members should be beneficial, because additional persons should bring new and different expertise and experience to Committee workings. The Exchange further believes that by setting higher standards with the independence requirement, it will promote independent decision-making by the Audit Committee. The term “independent director” will be defined as a director who has no material relationship with the Exchange or any affiliate of the Exchange, any Member of the Exchange or any affiliate of such Member, or any issuer of securities that are listed or traded on the Exchange or a facility of the Exchange.³ The term “material relationship” will be defined as a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the director.⁴

   The Board of Governors’ would determine whether the Audit Committee members are independent upon that director’s nomination and thereafter no less frequently than annually and as often as necessary in light of the director’s circumstances.⁵ The amendment proposes giving

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the Board of Governors the opportunity from time to time to adjust the number of members of
the Audit Committee.

The Exchange also believes that the codification of the Committee’s responsibilities with
greater specificity is also appropriate. The proposed amendment incorporates into the By-Law
the enhanced Audit Committee responsibilities that are adopted from the Sarbanes-Oxley Act of
2002.\footnote{While the Sarbanes-Oxley Act of 2002 does not by its terms apply to the Exchange, the
Exchange has embraced applicable concepts on a voluntary compliance basis.} The Exchange removed the phrase “independent public accountants” from Section 10-9(b) of Article X and added the phrase “external auditors” to broaden the scope of the audit
committee’s oversight.

b. \textbf{Statutory Basis}

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\footnote{15 U.S.C. 78f(b).} in
general, and furthers the objectives of Section 6(b)(5) of the Act\footnote{15 U.S.C. 78f(b)(5).} in particular, in that it is
designed to protect investors and the public interest.

4. \textbf{Self-Regulatory Organization’s Statement on Burden on Competition}

The Exchange does not believe that the proposed rule change will impose any burden on
competition not necessary or appropriate in furtherance of the purposes of the Act.

5. \textbf{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.

6. \textbf{Extension of Time Period for Commission Action}

The Exchange does not consent to an extension of the time period for
Commission action.
7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

4. Amended text of the proposed rule change indicating any additions, or deletions from the immediately preceding filing.

5. Text of the proposed rule change.
SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-Phlx-2004-37)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Increase the Size of the Audit Committee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\) and Rule 19b-4\(^2\) thereunder, notice is hereby given that on ______________________ 2005, 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 Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Phlx, pursuant to Section 19(b)(1) of the Act\(^3\) and Rule 19b-4 thereunder,\(^4\) proposes to amend Exchange By-Law Article X, Sections 10-9 (a) - (b) to: (i) allow the Board of Governors the ability to increase the size of the Audit Committee beyond its current three persons to a maximum of five persons; and (ii) to require the members of the Audit Committee to be independent directors. Additionally, the proposed amendment incorporates enhanced Audit Committee responsibilities.

The text of amended Exchange By-Law Article X, is attached hereto as Exhibit 5.

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\(^4\) 17 CFR 240.19b-4
II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx 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 Phlx 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 to strengthen the composition and charter of the Audit Committee by increasing the pool of candidates eligible to serve, which may bring additional expertise to the Committee, as well as to codify more of its responsibilities. The Exchange believes that expanding the size of the Audit Committee to permit (but not mandate) additional Committee members should be beneficial, because additional persons should bring new and different expertise and experience to Committee workings. The Exchange further believes that by setting higher standards with the independence requirement, it will promote independent decision-making by the Audit Committee. The term “independent director” will be defined as a director who has no material relationship with the Exchange or any affiliate of the Exchange, any Member of the Exchange or any affiliate of such Member, or any issuer of securities that are listed or traded on the Exchange or a facility of the Exchange.\(^5\) The term

“material relationship” will be defined as a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the director.\textsuperscript{6}

The Board of Governors’ would determine whether the Audit Committee members are independent upon that director’s nomination and thereafter no less frequently than annually and as often as necessary in light of the director’s circumstances.\textsuperscript{7} The amendment proposes giving the Board of Governors the opportunity from time to time to adjust the number of members of the Audit Committee.

The Exchange also believes that the codification of the Committee’s responsibilities with greater specificity is also appropriate. The proposed amendment incorporates into the By-Law the enhanced Audit Committee responsibilities that are adopted from the Sarbanes-Oxley Act of 2002.\textsuperscript{8} The Exchange removed the phrase “independent public accountants” from Section 10-9(b) of Article X and added the phrase “external auditors” to broaden the scope of the audit committee’s oversight.

2. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\textsuperscript{9} in general, and furthers the objectives of Section 6(b)(5) of the Act\textsuperscript{10} in particular, in that it is designed to protect investors and the public interest

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

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\textsuperscript{8} While the Sarbanes-Oxley Act of 2002 does not by its terms apply to the Exchange, the Exchange has embraced applicable concepts on a voluntary compliance basis.

\textsuperscript{9} 15 U.S.C. 78f(b).

\textsuperscript{10} 15 U.S.C. 78f(b)(5).
The Exchange does not believe that the proposed rule change will impose any burden on
competition not necessary or appropriate in furtherance of the purposes of the Act.

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 shall: (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. Comments
may be submitted by any of the following methods:

Electronic comments:

- Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2004-
37 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and
  Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2004-37. This file number should be
included on the subject line if e-mail is used. To help the Commission process and review your
comments more efficiently, please use only one method. The Commission will post all
comments on the Commission’s Internet Web site (http://www.sec.gov/rules/sro.shtml). 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 the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2004-37 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

Amended text of the proposed rule change indicating any additions, or deletions from the immediately preceding filing.

Brackets indicate deletions, underlining indicates new text.

Bold underlining indicates text added since the immediately proceeding filing.

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

a. Purpose

The purpose of the proposed rule change is to strengthen the composition and charter of the Audit Committee by increasing the pool of candidates eligible to serve, which may bring additional expertise to the Committee, as well as to codify more of its responsibilities. The Exchange believes that expanding the size of the Audit Committee to permit (but not mandate) additional Committee members should be beneficial, because additional persons should bring new and different expertise and experience to Committee workings. The Exchange further believes that by setting higher standards with the independence requirement, it will promote independent decision-making by the Audit Committee. The term “independent director” will be defined as a director who has no material relationship with the Exchange or any affiliate of the Exchange, any Member of the Exchange or any affiliate of such Member, or any issuer of securities that are listed or traded on the Exchange or a facility of the Exchange. The term “material relationship” will be defined as a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the director.


serve on the Committee should also bring additional expertise and experience to it. Under the Exchange’s By-Laws, the term “non-industry” when used in the context of Governor or Standing Committee members means (a) public Governors, (b) officers and employers of issuers of securities listed on the Exchange, (c) persons affiliated with broker-dealers that operate solely to assist the securities related activities of the business of non-member affiliates (such as brokers or dealers established to (i) distribute an affiliate’s securities which are issued on a continuous or regular basis, or (ii) process the limited buy and sell orders of the shares of employee owners of the affiliate), (d) employers of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of a consolidated entity, and who are primarily in the business of the non member entity, and (e) other individuals who would not be industry Governors or Committee members.\(^5\)

The Board of Governors’ would determine whether the Audit Committee members are independent upon that director’s nomination and thereafter no less frequently than annually and as often as necessary in light of the director’s circumstances.\(^6\) The amendment proposes giving the Board of Governors the opportunity from time to time to adjust the number of members of the Audit Committee.

The Exchange also believes that the codification of the Committee’s responsibilities with greater specificity is also appropriate. The proposed amendment incorporates into the By-Law the enhanced Audit Committee responsibilities that are adopted from the Sarbanes-Oxley Act of 2002.\(^7\) The Exchange removed the phrase “independent public

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\(^5\) See Exchange By-Law Article I, Section 1-1(t).


\(^7\) While the Sarbanes-Oxley Act of 2002 does not by its terms apply to the Exchange, the Exchange has embraced applicable concepts on a voluntary compliance basis.
accountants” from Section 10-9(b) of Article X and added the phrase “external auditors” to broaden the scope of the audit committee’s oversight.

[Additionally, pursuant to the By-Laws, the term “public” when used in the context of Governor or Committee members shall mean non-industry persons who have no material business relationship with a broker-dealer or the Exchange.\(^8\) The Exchange has also considered the requirements of the Sarbanes-Oxley Act of 2002.\(^9\) “Independence” under Sarbanes-Oxley Act of 2002 is determined by virtue of (i) a director’s receipt of compensation from the “issuer” (ie. the Exchange) (other than directors’ fees), (ii) a director’s firm or family member receiving compensation from the “issuer” or (iii) a director’s being an affiliate of the issuer or a subsidiary. The Exchange believes that having a minority of “independent”, non-industry Governors on the Audit Committee does not lessen the Exchange’s commitment to the spirit of Sarbanes-Oxley. The proposed By-law amendment requires non-industry Governors serving on the Audit Committee to have no material business relationship with the Exchange, consistent with the “independence” principles of Sarbanes-Oxley.\(^10\)

An additional reason for allowing the expansion of the Audit Committee by including independent, non-industry Governors is the potential opportunity to select a Governor whom could qualify as a “financial expert.” Some Public Governors may not have the experience in business or be academically trained to fulfill the requirements to be considered a “financial expert” to qualify under the Sarbanes-Oxley criteria for such expertise; whereas an independent, non-industry Governor may have such experience, and credentials to so qualify.

\(^8\) See Exchange By-Law Article I, Section 1-1(y).


\(^10\) It should be noted that the Sarbanes-Oxley Act of 2002 does not by its terms apply to the Exchange, however the Exchange has embraced applicable concepts on a voluntary compliance basis.
The amendment proposes giving the Board of Governors the opportunity from time to time to adjust the number of members of the Audit Committee. The amendment would allow non-industry Governors to be appointed to the Audit Committee so long as a majority of the Committee is composed of Public Governors. The By-Law provision retains the requirement that Audit Committee members shall not serve in a management capacity with the Exchange or any affiliate thereof and must be free of any other relationships that, by a decision of the Board of Governors, would interfere with the exercise of independent judgment.

The Exchange also believes that the codification of the Committee’s responsibilities with greater specificity is also appropriate. The proposed amendment incorporates into the By-Law the enhanced Audit Committee responsibilities to:

- Appoint, review and provide oversight of the Exchange’s external auditors (auditors);
- Ensure the rotation of lead and concurrent auditors every five years and certain of the auditors every seven years;
- Evaluate the independence of the auditors;
- Establish procedures for the receipt, retention and treatment of certain complaints about accounting or auditing matters and confidential anonymous submissions by Exchange employees about questionable accounting practices; and
- Determine the appropriate amount of funding to be provided by the Exchange to the Audit Committee for purposes of paying auditors to prepare and issue an audit report, as well as compensation to advisors employed by the Audit Committee.
Amended Text

PHLX BY-LAW Article 10, Sec. 10-9, Audit Committee

SEC. 10-9.

(a) The Audit Committee shall consist of at least three (3) members, the exact number to be determined from time to time by the Board of Governors. All members shall be independent non-industry Governors who have no material business relationship with the Exchange. A majority of the members, but not less than three (3) members shall be public Governors [independent directors who have no material relationship with the Exchange.]

Audit Committee members shall not serve in a management capacity with the Exchange or any affiliate thereof and must be free of any other relationships that, by decision of the Board of Governors, would interfere with the exercise of independent judgment. [The term “independent director” will be defined as a director who has no material relationship with the Exchange or any affiliate of the Exchange, any Member of the Exchange or any affiliate of such Member, or any issuer of securities that are listed or traded on the Exchange or a facility of the Exchange. The term “material relationship” will be defined as a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the director.]

(b) The Audit Committee shall have responsibility for dealings with the Exchange’s independent public accountants including external auditors, which includes: (i) sole responsibility for the appointment, retention and dismissal of such public accountants; (ii) direct oversight over such auditors; (iii) review, at least annually, of the qualification and performance of such auditors; [reviewing the scope of their services and fees; (iii) reviewing the audit plan;]
(iv) direct authority to resolve disagreements between management and such auditors regarding financial reporting [reviewing internal controls]; (v) responsibility to ensure the rotation of the lead and concurrent auditors every five years and certain other auditors every seven years, with time out periods; (vi) evaluation of the independence of external auditors, including ensuring that, other than deferred tax and compliance services, external auditors do not engage in certain non-audit services, as identified in the Audit Committee Charter, when they conduct audits for the Exchange, and approval of non-audit services where appropriate; (vii) [reviewing] review of the “management letter” and reply thereto; and (viii) [having] the ability to meet with [the public accountants] external auditors without Exchange officers or employees.

The Audit Committee shall have responsibility for the Exchange’s Internal Audit Department, which shall report to the Audit Committee. Such responsibility will include review of policies and procedures for and significant reports produced by the Internal Audit Department.

The Audit Committee shall review any legal matters that may materially impact the Exchange’s financial statements and all examination, inspection or other reports made by any regulatory agency with regulatory oversight for the Exchange and the Exchange’s responses thereto.

The Audit Committee shall review, at least annually, compliance with the Exchange’s Code of Conduct with the assistance of the General Counsel’s office.

The Audit Committee shall have the authority to conduct special reviews of any alleged improper conduct with respect to Exchange related activity, operations, finance or regulation.

The Audit Committee shall establish procedures for the receipt, retention, and treatment of complaints received by the Exchange regarding accounting, internal accounting controls, or
other auditing matters and confidential anonymous submissions by Exchange employees regarding questionable accounting practices.

The Audit Committee may select and engage its own [counsel, consultants, accountants or other experts] advisor(s) to assist [in such reviews] it in carrying out its duties.

The Audit Committee shall determine the appropriate amount of funding to be provided by the Exchange for the purpose of paying: (i) compensation to external auditors retained by the Audit Committee to prepare or issue an audit report; (ii) compensation to adviser(s) employed by the Audit Committee that it determines are necessary to carry out its duties; and (iii) ordinary administrative expenses of the Audit Committee that are necessary or appropriate to carry out its duties in respect of external auditors.

The Audit Committee shall have the authority to compel to appear and/or provide documents or other information, by members, member organizations, associated persons of member organizations, members of the Board of Governors, committee members, Exchange officers or Exchange employees.

(c) The Audit Committee shall meet at least once every calendar quarter.
Text of the proposed rule change

Brackets indicate deletions, underlining indicates new text.

PHLX BY-LAW

Article 10, Sec. 10-9, Audit Committee

SEC. 10-9.

(a) The Audit Committee shall consist of at least three (3) members, the exact number to be determined from time to time by the Board of Governors. [who] All members shall [all] be [public] [independent non-industry Governors who have no material business relationship with the Exchange. A majority of the members, but not less than three (3) members shall be public Governors] independent directors who have no material relationship with the Exchange. [Audit Committee members shall not serve in a management capacity with the Exchange or any affiliate thereof and must be free of any other relationships that, by decision of the Board of Governors, would interfere with the exercise of independent judgment.] The term “independent director” will be defined as a director who has no material relationship with the Exchange or any affiliate of the Exchange, any Member of the Exchange or any affiliate of such Member, or any issuer of securities that are listed or traded on the Exchange or a facility of the Exchange. The term “material relationship” will be defined as a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the director.

(b) The Audit Committee shall have responsibility for dealings with the Exchange’s [independent public accountants including] external auditors, which includes: (i) [making recommendations to the Board of Governors as to] sole responsibility for the appointment, retention and [dismissal of such public accountants] replacement of such auditors; (ii) direct oversight over such auditors; (iii) review, at least annually, of the qualification and performance
of such auditors; [reviewing the scope of their services and fees; (iii) reviewing the audit plan;]
(iv) direct authority to resolve disagreements between management and such auditors regarding
financial reporting [reviewing internal controls]; (v) responsibility to ensure the rotation of the
lead and concurrent auditors every five years and certain other auditors every seven years, with
time out periods; (vi) evaluation of the independence of external auditors, including ensuring
that, other than deferred tax and compliance services, external auditors do not engage in certain
non-audit services, as identified in the Audit Committee Charter, when they conduct audits for
the Exchange, and approval of non-audit services where appropriate; (vii) [reviewing] review of
the “management letter” and reply thereto; and (viii) [having] the ability to meet with [the public
accountants] external auditors without Exchange officers or employees.

The Audit Committee shall have responsibility for the Exchange’s Internal Audit
Department, which shall report to the Audit Committee. Such responsibility will include review
of policies and procedures for and significant reports produced by the Internal Audit Department.

The Audit Committee shall review any legal matters that may materially impact the
Exchange’s financial statements and all examination, inspection or other reports made by any
regulatory agency with regulatory oversight for the Exchange and the Exchange’s responses
thereto.

The Audit Committee shall review, at least annually, compliance with the Exchange’s
Code of Conduct with the assistance of the General Counsel’s office.

The Audit Committee shall have the authority to conduct special reviews of any alleged
improper conduct with respect to Exchange related activity, operations, finance or regulation.
The Audit Committee shall establish procedures for the receipt, retention, and treatment of complaints received by the Exchange regarding accounting, internal accounting controls, or other auditing matters and confidential anonymous submissions by Exchange employees regarding questionable accounting practices.

The Audit Committee may select and engage its own [counsel, consultants, accountants or other experts] advisor(s) to assist [in such reviews] it in carrying out its duties.

The Audit Committee shall determine the appropriate amount of funding to be provided by the Exchange for the purpose of paying: (i) compensation to external auditors retained by the Audit Committee to prepare or issue an audit report; (ii) compensation to adviser(s) employed by the Audit Committee that it determines are necessary to carry out its duties; and (iii) ordinary administrative expenses of the Audit Committee that are necessary or appropriate to carry out its duties in respect of external auditors.

The Audit Committee shall have the authority to compel to appear and/or provide documents or other information, by members, member organizations, associated persons of member organizations, members of the Board of Governors, committee members, Exchange officers or Exchange employees.

(c) The Audit Committee shall meet at least once every calendar quarter.