Proposed Rule Change by Philadelphia Stock Exchange
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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Extension of Time Period for Commission Action
Date Expires

**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**: Cynthia
- **Last Name**: Hoekstra
- **Title**: Director
- **E-mail**: cynthia.hoekstra@phlx.com
- **Telephone**: (215) 496-5066
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**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**: 05/15/2006

**By**: Cynthia Hoekstra

**Director**

**Signature**

Cynthia HOekstr,
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.

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.

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.

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)

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.

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.

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
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, Section 10-11, Business Conduct Committee and Exchange Rules 960 and 970 to: (1) establish a Hearing Officer position; (2) amend certain provisions relating to the retention and compensation of Hearing Panelists; (3) amend the hearing process as it relates to decisions issued by the Hearing Panel; and (4) make other minor, non-substantive changes to Exchange By-Law Article X, Section 10-11, Business Conduct Committee and Rules 960 and 970.

Specifically, the proposal discussed below would create the new staff position of a “Hearing Officer,” who, along with two other Hearing Panelists, would hear contested disciplinary matters that previously were heard by the Business Conduct Committee ("BCC" or "Committee").

The proposed amendments to By-Law Article X, Section 10-11 and Rules 960 and 970 are set forth below:

*Underlining indicates new text and brackets indicate deleted text*

**Sec. 10-11.**

**Business Conduct Committee**

(a) The Business Conduct Committee shall, in accordance with the Rules of the Board of Governors of the Exchange, have exclusive jurisdiction to:

(i) monitor compliance with the Exchange Act, the rules and regulations thereunder, these By-Laws and rules of the Exchange or any interpretation thereof,

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and the rules, regulations, resolutions and stated policies of the Board of Governors or any committee of the Exchange, by Members, participants, Member Organizations and participant organizations and persons associated with any such persons or organizations;

(ii) examine into the business conduct and financial condition of Members, participants, Member Organizations and participant organizations and persons associated with any such persons or organizations; and

(iii) authorize the initiation of any disciplinary actions or proceedings brought by the Exchange;

(iv) conduct hearings and render decisions in summary disciplinary actions and proceedings;

(v) render decisions in summary disciplinary actions and proceedings;

(b) The Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) shall impose appropriate sanctions of expulsion, suspension, fine, censure or any other fitting sanction where the Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) finds that a violation within the disciplinary jurisdiction of the Exchange has been committed. The jurisdiction of this Committee and its designee (including a Hearing Officer or Hearing Panel) shall not extend to the enforcement of rules and regulations of the Floor Procedure Committee or the Options Committee relating to order, decorum, health, safety and welfare on the trading floors, or to hearings held by and sanctions imposed by such committees relating to such matters, except as permitted by the rules of the Exchange or any interpretation thereof, and any regulations promulgated thereunder.

(b)c The Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) shall have authority, whenever it shall appear that a Member Organization is in violation of Rule 703 of the Rules of the Board of Governors to direct a general partner(s) or an executive officer(s) of such Member Organization to appear before the Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) for examination upon forty-eight (48) hours notice, either oral or in writing and, after such examination, such Committee or Committee’s designee (including a Hearing Officer or Hearing Panel) shall have authority to suspend such Member Organization until the requirements of Rule 703 are fully met. Any such suspension directed by the Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) shall be subject to review by the Board of Governors. In the event of a reversal by the Board of Governors of the suspension imposed by such Committee or the Committee’s designee (including a Hearing Officer or Hearing Panel), a Member Organization or officer, partner, director (or person in a similar position) or stockholder thereof shall be prohibited from instituting a lawsuit in
any forum against the Exchange or the members of the Business Conduct Committee, or the Committee’s designee (including a Hearing Officer or Hearing Panel), or hold the Exchange, or any member of such Committee, or the Committee’s designee (including a Hearing Officer or Hearing Panel) liable in damages based in whole or in part upon the suspension imposed by such Committee or by the Committee’s designee (including a Hearing Officer or Hearing Panel).

((c)d) The Business Conduct Committee may prescribe regulations for the carrying of securities on margin by Members, participants and Member Organizations and participant organizations for customers; and it may also make such regulations in regard to the segregation or hypothecation of securities carried in customers' accounts as it deems advisable.

((d)e) The Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) may prohibit trading by a Member, participant or Member Organization or participant organization which is excessive in view of such person's or organization's capital.

((e)f) The Business Conduct Committee may require detailed financial reports of a Member, participant or Member Organization or participant organization, and such other operational reports as it may deem advisable.

((f)g) The Business Conduct Committee shall have supervision over the advertising of Members, participants and Member Organizations and participant organizations.

((g)h) The Business Conduct Committee shall consist of nine (9) members as follows: three (3) independent Governors; one (1) Member whose business is principally carried out on the equity floor; one (1) Member whose business is principally carried out on the equity options floor; and four (4) persons who are Members or persons associated with a Member Organization.

*    *    *

Rule 960.1.

Jurisdiction

(a) Any member, member organization, or any partner, officer, director or person employed by or associated with any member or member organization (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities [and] Exchange Act of 1934 (Exchange Act), the rules and regulations thereunder, the by-laws and rules of the Exchange or any interpretation thereof, and the rules, regulations, resolutions and stated policies of the Board of Governors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations,
or association with a member or member organization, or any other fitting sanction in accordance with the provisions of these disciplinary rules.

(b) An individual member, or a partner, officer, director or person employed by or associated with a member or member organization may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by employees under his supervision or by the member organization with which he is associated, as though such violations were his own. A member organization may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a member or other person who is associated with such member organization, as though such violation were its own.

(c) Any member, or any partner, officer, director, or person employed by or associated with a member or member organization, and any member organization shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's permit or foreign currency options participation or the termination of the employment by or the association with a member or member organization of such partner, officer, director or person, or following the deregistration of a member organization from the Exchange; provided, that the Exchange serves written notice to such former member, partner, officer, director, employee, associated person or member organization within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member, or as a partner, officer, director or person employed by or associated with a member or member organization, or prior to the deregistration of such member organization.

**Interpretations and Policies**

.01 The term "person associated with a member" or "associated person of a member" shall have the same meaning as in Section 3(a)(21) of the [Securities] Exchange Act [of 1934].

.02 A summary suspension or other action taken pursuant to By-Laws Sections 8-1, 10-11([b]g), 14-5, 17-1, 17-2, and Rules 50, 60, or Section 6(d)(3) of the Exchange Act shall not be deemed to be disciplinary action under these disciplinary rules.

* * *

**Rule 960.2**

**Complaint and Investigation**

**Investigation and Authorization of Complaint**

(a) Initiation of Investigation. The Exchange shall investigate possible violations within the disciplinary jurisdiction of the Exchange upon instruction of either the Board, the Business Conduct Committee, the Chairman or other Exchange officials designated by
the Chairman or upon receipt by the Exchange of a written accusation from a member, member organization or from any person which specifies in reasonable detail the facts which are the subject of the accusation.

(b) Cooperation with Investigation or Examination. Each member, member organization, or person associated with a member shall promptly comply with any request of the Exchange's [Market] Surveillance Departments, Investigations Department, Examination Department, Enforcement Department or any officer of the Exchange for information, documents or testimony; each member, member organization or person associated with a member or member organization shall not otherwise impede or delay an Exchange investigation into matters within its disciplinary jurisdiction.

(c) Right to Counsel. A member, member organization or person associated with a member shall have the right to be represented by counsel in connection with requests for information, documents or testimony and throughout the course of any disciplinary proceeding and the review thereof or any hearing concerning a summary action.

(d) Report. Whenever the staff of the Exchange has a reasonable basis to believe that a violation within the disciplinary jurisdiction of the Exchange has occurred, a written report shall be submitted to the Business Conduct Committee specifying the violations which are believed to have occurred and those facts which gave rise to these violations.

(e) Notice and Statement. Prior to submitting its report, the staff shall notify the person(s) who is the subject of the report ("Subject") of the general nature of the allegations and of the specific provisions of the Exchange Act, rules and regulations promulgated thereunder, or the Certificate of Incorporation, by-laws or rules of the Exchange or any interpretation thereof or any resolution of the Board regulating the conduct of business on the Exchange, that appear to have been violated. The staff shall also inform the Subject that the report will be reviewed by the Committee. The Subject may then submit a written statement to the Committee concerning why no disciplinary action should be taken. To assist a Subject in preparing such a written statement, he shall have access to any documents and other materials in the investigative file of the Exchange that were furnished by him or his agents.

(f)(i) Determination to Initiate Charges. Whenever it shall appear to the Business Conduct Committee that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange and that disciplinary action is warranted, the Business Conduct Committee shall direct the staff of the Exchange to prepare a statement of charges. Whenever the Business Conduct Committee determines that violations within the disciplinary jurisdiction of the Exchange have not occurred or that disciplinary action is not warranted it shall so instruct the staff and its instruction not to initiate disciplinary action along with the reasons for not initiating such action shall be recorded in the minutes of the Business Conduct Committee.

(ii) When the number of violations under Exchange Rules is determined based upon an exception-based surveillance program, the Exchange may aggregate, or "batch,"
individual violations of Exchange order handling rules and consider such "batched" violations as a single offense only in accordance with the guidelines set forth in the Exchange's Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. In the alternative, the Exchange may refer the matter to the Business Conduct Committee for possible disciplinary action when (i) the Exchange determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be so egregious that referral to the Business Conduct Committee for possible disciplinary action is appropriate.

*    *    *

Rule 960.3.
Charges

Statement of Charges

The Statement of Charges shall set forth the specific provisions within the disciplinary jurisdiction of the Exchange alleged to have been violated, the persons or organization alleged to have committed each of the violations ("Respondents") and the specific acts which give rise to the alleged violations. A copy of the Statement of Charges shall be served upon each of the Respondents in accordance with Rule 960.11.

*    *    *

Rule 960.4.
Answer

A Respondent shall have 15 business days after service of the Statement of Charges to file a written answer thereto. The Answer shall specifically admit or deny each allegation contained in the Statement of Charges, and a Respondent shall be deemed to have admitted any allegation contained not specifically denied. The Answer may also contain any defense which a Respondent wishes to submit and may be accompanied by documents in support of his Answer or defense. A Respondent must state in his Answer whether he requests a hearing concerning the statement of charges. In lieu of requesting a hearing, a Respondent may request that the matter be decided upon written submissions, whereupon the Hearing Officer (as defined in Rule 960.5) shall decide whether to grant such request and determine a schedule for each party to make their respective submissions. A Respondent who does not [so] request a hearing or that the matter be decided upon written submissions, shall be deemed to have waived his right to request a hearing or have his written submissions, other than the Answer and any documents in support of his Answer or defense, be considered by a Hearing Panel (as defined in Rule 960.5). [and t]he Hearing Panel [Business Conduct Committee] may thereafter prepare its decision in accordance with Rule 960.8. In the event a Respondent fails to file an Answer within the specified time, or has not within the specified time, requested and obtained from Enforcement Staff [the Business Conduct Committee] an extension of time
to answer, the charges shall be considered to be admitted and the Hearing Panel [Business Conduct Committee] may prepare its decision in accordance with Rule 960.8.

*    *    *

**Rule 960.5. Hearing**

(a) [Participants and Selection of] Hearing Panels.

1. Request for a Hearing -- A hearing on the Statement of Charges shall, at the request of Respondent in his Answer, or upon motion of the Business Conduct Committee, be held before a Hearing Panel composed of three persons [to be appointed by the Chairman of the Business Conduct Committee or their designee]. Should the hearing be at the request of the Respondent, [counsel for the] Exchange staff must provide written notice to the Chair[man] of the Business Conduct Committee or the Chair’s [their] designee which requests the naming of a [h]earing [p]anel within 5 [10] business days of receiving Respondent’s request for a hearing.

2. Selection of Hearing Panel -- The Chair[man] of the Business Conduct Committee or [their] the Chair’s designee shall name a Hearing Panel within 5 [10] business days of either (i) receipt of notice from [counsel for the] Exchange staff which requests the naming of a Hearing Panel, or (ii) upon motion of the Business Conduct Committee for naming of a Hearing Panel. The Chair[man] of the Business Conduct Committee or [their] the Chair’s designee shall then promptly notify [counsel for the] Exchange staff and Respondent of the names of the members of the Hearing Panel.

3. Hearing Officer -- The presiding person of each Hearing Panel shall be the Hearing Officer [a member of the Business Conduct Committee]. The responsibilities of the Hearing Officer include, but are not limited to: presiding over hearings in contested disciplinary cases authorized by the Business Conduct Committee; conducting pre-hearing conferences; ruling on procedural or discovery matters; scheduling hearing sessions; making all necessary evidentiary or other rulings (in consultation with the Hearing Panelists); regulating the conduct of the hearing; imposing appropriate sanctions for improper conduct by a party or a party’s representative; drafting and issuing decisions on behalf of the Hearing Panel; and rendering decisions in connection with Summary Disposition Proceedings. The Hearing Officer will not be permitted to be involved in any manner in the investigation of possible misconduct, to participate in the consideration by the Business Conduct Committee of whether to institute a disciplinary action, to render a decision following a hearing without the concurrence of a majority of the Hearing Panel, rule upon requests to disqualify the Hearing Officer or any member of the Hearing Panel or issue citations for violations of Exchange rules or floor procedure advices.

4. The other two persons on the Hearing Panel shall be members of the Exchange, or general partners or officers of member organizations, or such other persons whom the
Chair[man] of the Business Conduct Committee or [their] the Chair’s designee considers to be qualified. The Chair[man] of the Committee or [their] the Chair’s designee shall select these two other persons from individuals [those persons] who [shall] have been deemed qualified to serve as a Hearing Panelist [designated by the Chairman of the Board of Governors to serve on such hearing panels]. In making such selections the Chair[man] or the Chair’s [their] designee shall, to the extent practicable, choose individuals whose background, experience and training qualify them to consider and make determinations regarding the subject matter to be presented to the Hearing Panel. The [He] Chair shall also consider such factors as the availability of the individual Hearing Panelists [hearing officers], the extent of their prior service on Hearing Panels and any relationship between such persons and a [r]espondent which might make it inappropriate for such persons to serve on the Hearing Panel.

After being designated as a qualified Hearing Panelist, each prospective Hearing Panelist shall complete a mandatory training session to be conducted by the Hearing Officer. Qualified Hearing Panelists would serve for three-year terms. After that time, if a Hearing Panelist wished to continue serving, the Hearing Panelist must submit an updated application for review and approval by the Business Conduct Committee.

[3]5. Notice -- Promptly after the selection of the Hearing Panelists, the Chair[man] of the Business Conduct Committee or [their] the Chair’s designee shall cause written notice thereof to be given to the [accused] Respondent. If any person involved in the disciplinary proceeding shall have knowledge of a relationship between himself and any person selected for service on the Hearing Panel which might result in such Panelist being unable to render a fair and impartial decision, he shall give prompt written notice thereof to the Chair[man] of the Business Conduct Committee or [their] the Chair’s designee, specifying the nature of such relationship and the grounds for contesting the qualification of such person to serve on the Hearing Panel. The decision of the Chair[man] of the Business Conduct Committee or [their] the Chair’s designee shall be final and conclusive with respect to the qualification of any person to serve on the Hearing Panel.

[4]6. Compensation of Hearing Panelists -- Hearing Panelists appointed by the Chair[man] of the Business Conduct Committee [may] will be compensated for any hearing sessions, including pre-hearing conferences, and for one deliberation session per disciplinary proceeding for which a Hearing Panel renders a decision. The fixed and non-negotiable rate to be paid to the Hearing Panelists shall be the same for each hearing session that lasts four hours or less and for one deliberation session. A hearing session is defined as any meeting between the parties and the Hearing Panel. [in extraordinary cases, as determined by the Chairman of the Business Conduct Committee, in consultation with the Chairman of the Board of Governors. Factors to be considered when determining whether a case is extraordinary include, but are not limited to, the anticipated length of time of the hearing; the complexity and serious nature of the matter; and the magnitude of the potential penalty. Compensation will be paid at the same rate and on the same terms as Board of Governors members' compensation for service on a Standing Committee with the understanding that any multiple meetings and/or hearings on the same day] If a Hearing Panelist is also a member of the Board of Governors, any
Board of Governors or Standing Committee meetings that are held on the same day as the hearing would be considered a single meeting for the purposes of compensation.

7. Hearing Officer Availability--If the Hearing Officer is unable to preside over the hearing for any reason, the Chair of the Business Conduct Committee shall appoint a qualified replacement Hearing Officer for that hearing. The replacement Hearing Officer will be selected from a pre-screened pool of qualified candidates.

(b) Notice of Hearing and Pre-Hearing Procedures.

1. [Scheduling of a] Hearing Date -- A hearing on the Statement of Charges shall [be scheduled for] commence no later than 120 days after the date of filing of a written Answer by the Respondent wherein a hearing is requested. Should the hearing be at the request of the Respondent, counsel for the Exchange staff must provide notice to the Chair of the Business Conduct Committee or the Chair’s designee which requests the setting of a hearing date [within 10 business days of receiving Respondents request for a hearing]. The request for a hearing date shall be made in writing to the Chair of the Business Conduct Committee or the Chair’s designee by (i) counsel for the Exchange staff, or (ii) on the motion of the Business Conduct Committee. The 120 day deadline for the commencement of a hearing may be extended by the Hearing Officer for good cause.

2. Notice -- The Respondent shall be given at least 15 business days notice of the time and place of the hearing.

3. Requests for Adjournments -- A request by the Respondent or Exchange staff for an adjournment of the hearing date shall be in writing and will be considered by the Hearing Officer for just cause. [If the request is made by the Respondent, said request shall be presented to the presiding person of the Hearing Panel with a copy to counsel for the Exchange, who shall enter the request into the Respondent's file. If the request is made by counsel for the Exchange, said request shall be presented to the presiding person of the Hearing Panel, with a copy to the Respondent, and in Respondent's file.] The [presiding person of the] Hearing Officer [Panel] shall promptly consider the request for an adjournment for just cause, rule on the request and inform the parties, in writing if time permits, as to whether the request was, or was not, granted. In the event that the request for an adjournment for just cause is granted, the Hearing Officer [presiding person of the Hearing Panel] shall, at that time, schedule a new hearing date and so inform the parties of the new date.

4. Exchange of Evidence -- The Exchange staff and the Respondent shall [, not less than 8 business days in advance of the scheduled hearing date,] furnish to the members of the Hearing Panel and to each other (i) copies of all documentary evidence each intends to present at the hearing, and (ii) a list of witnesses, including names, addresses and telephone numbers, that each intends to call at the hearing on such date as prescribed by the Hearing Officer, but in any event, not less than 8 business days in advance of the scheduled hearing date.
5. Pre-Hearing Conferences -- Where appropriate, the Hearing Officer [presiding person of the Hearing Panel] shall schedule one or more [a] pre-hearing conference(s) to be held on such date(s) as prescribed by the Hearing Officer, but in any event not less than 8 business days in advance of the scheduled hearing date, to be attended by [representatives of the] Exchange staff, each of the Respondents and [a member of] the Hearing Officer and/or Hearing Panel. The pre-hearing conference shall be held for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding. At such conference, and if they have not done so previously, [the] Exchange staff and the Respondents shall furnish to the Hearing Officer and/or Hearing Panel and to each other (i) copies of all documentary evidence [such] each intended to present at the [H]earing, and (ii) a list of witnesses, including names, addresses and telephone numbers, that each intends to call at the [H]earing. [The] Exchange staff and Respondents shall also attempt to stipulate to the authenticity of documents and to facts and issues not in dispute, and any other items which will serve to expedite the hearing of the matter.

(c) Conduct of Hearing. The Hearing Officer [Panel] (in consultation with the Hearing Panelists) shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by [a representative of] the Exchange staff who, along with Respondent, may present evidence and produce witnesses who shall testify under oath and shall be subject to cross examination and questioning by the Hearing Panel. The Hearing Panel may, on its own motion, request the production of documentary evidence and witnesses and may also question witnesses. A transcript of the hearing shall be made and shall become a part of the record. The costs of the making of such a transcript, including, but not limited to, the costs for the court reporter, reproduction of the transcript and producing copies thereof, shall be equally borne by the Exchange and by Respondent. [Counsel for the] Exchange staff shall provide a copy of the transcript of the hearing to the Hearing Officer [each member of the Hearing Panel] within 5 business days of receiving the transcript. [The Respondent shall be issued a bill for its portion of the costs along with its copy of the transcript.]

(d) Recommendation of Hearing Panel. Based on its review of the entire record of the proceeding, the Hearing Panel shall submit a written hearing report to the Business Conduct Committee containing: (i) proposed findings of fact concerning the allegations in the statement of charges; (ii) conclusions as to whether a violation within the disciplinary jurisdiction of the Exchange has occurred and an enumeration of such violations; and (iii) recommendations as to appropriate sanctions. The Hearing Panel shall complete such a hearing report no later than 45 days after counsel for the Exchange has served the members of the Hearing Panel with a copy of the transcript of the hearing. The hearing report shall be presented to the Business Conduct Committee at the next Business Conduct Committee meeting after the report is completed.]

Interpretations and Policies:

.01 Intervention. Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Hearing Panel that he has an
interest in the subject of the hearing and that the disposition of the matter, may, as a practical matter, impair or impede his ability to protect that interest. Also, the Hearing Panel may in its discretion permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing shall file with the Hearing Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought.

.02 The Hearing Panel, in exercising its discretion concerning intervention, shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

.03 Attendance. Any person not otherwise a party or licensed counsel representing a party may not attend a hearing unless specifically allowed by the Hearing Panel.

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Rule 960.6.
[Summary Proceedings]

Summary [Disciplinary] Disposition Proceedings

(a) Initiation of Summary [Disciplinary] Disposition Proceeding. [The Business Conduct Committee] A Hearing Officer may make a summary decision in a disciplinary proceeding that violations within the disciplinary jurisdiction of the Exchange have occurred and impose sanctions upon those culpable for such conduct whenever:

(i) any member, or member organization or person associated with or employed by a member or member organization has admitted to such a violation; or

(ii) there is no dispute concerning those material facts which give rise to such violations.

(b) Notice to Respondent. The Exchange shall serve notice and a copy of such a summary decision upon Respondents in accordance with Rule 960.11. Respondents may, no later than (15) fifteen business days after service, file with the Exchange a written reply to the summary decision, including documentary support, asking the [Committee] Hearing Officer to set aside any of the findings made or sanctions imposed in the summary decision. Respondents may include a request for a hearing in their reply. If a reply is not filed within the specified time period, the summary decision shall become final and the Respondents shall have waived any and all rights of review. Hearings held pursuant to this section shall be governed by those procedures contained in Rule 960.5. When a Respondent has admitted to committing a violation, any further proceeding pursuant to these disciplinary rules shall be limited to the issue of the propriety of the sanction imposed.
(c) Further Proceeding. The Hearing Officer [Business Conduct Committee] shall set aside a decision in a summary proceeding if a Respondent establishes that an issue of material fact or law exists as to any of the findings contained or sanctions imposed in the summary decision. Should a summary decision be set aside on these grounds, a hearing will then be scheduled on the merits of the issues in dispute and the case shall proceed in accordance with Rules 960.5, 960.8 and 960.9. If the Hearing Officer [Business Conduct Committee] decides that no issues of material fact or law exist with respect to the summary decision, the summary decision becomes final and may be appealed in accordance with Rule 960.9.

* * *

Rule 960.7.
Offers of Settlement

At any time during a period not to exceed 120 [one hundred and twenty] days immediately following the date of filing of Respondent’s written Answer [service of a statement of charges upon a respondent in accordance with Rule 960.11], a Respondent may submit to the Business Conduct Committee a written offer of settlement which shall contain a proposed stipulation of facts and shall consent to specified sanctions. Where the Business Conduct Committee accepts an offer of settlement, it shall issue a decision [including findings and conclusions] and impose sanctions consistent with the terms of such offer. Where the Business Conduct Committee rejects an offer of settlement, it shall notify the Respondent in accordance with Rule 960.11 and the matter shall proceed as if such offer had not been made, and the offer and all documents relating thereto shall not become part of the record. A decision of the Business Conduct Committee issued upon acceptance of an offer of settlement as well as its determination whether to accept or reject such an offer shall be final, and the Respondent may not seek review thereof. A copy of the decision shall be promptly served on the Respondents in accordance with Rule 960.11.

Interpretation and Policies:

.01 [A hearing may be held during the one hundred and twenty day period, but if it was not, the hearing will be scheduled as soon as practicable thereafter.] If a Respondent submits an offer of settlement after the 120 [one hundred and twenty] day period, the Business Conduct Committee may consider such offer and determine appropriate sanctions as long as its consideration does not delay the hearing in the matter. If a Respondent submits an offer of settlement after the hearing has commenced, the Exchange staff shall promptly submit its position with respect to such offer of settlement. The Hearing Panel shall then determine whether to consider the offer of settlement and, if considered, whether to accept or reject such offer.

* * *
Rule 960.8.  
Decision

Except as provided in Rule 960.7, the [Business Conduct Committee] Hearing Panel shall review the entire record of the disciplinary proceeding or, if appropriate, the written submissions if the Hearing Officer granted the Respondent’s request to decide the matter upon such written submissions. After this Review, the Hearing Panel, by a majority vote, shall determine whether Respondents have committed violations and the appropriate sanctions, if any, therefor. The [Business Conduct Committee] Hearing Panel shall thereafter issue a written decision in conformity with its determination, including in its decision a statement of findings and conclusions, with the reasons therefor, upon all material issues presented in the record, and whether each violation within the disciplinary jurisdiction of the Exchange alleged in the statement of charges has occurred. The decision shall be prepared, absent extraordinary circumstances, within 60 days after Exchange staff has served the Hearing Officer and/or members of the Hearing Panel with a copy of the transcript of the hearing. A copy of the decision shall be promptly served on the Respondents in accordance with Rule 960.11.

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Rule 960.9.  
Review

(a) Petition by Respondent. A Respondent shall have 10 days after service of notice and a copy of a decision made by the Hearing Officer pursuant to Rule[s] 960.6(c) [and] by the Hearing Panel pursuant to Rule 960.8 to appeal such decision to the Board of Governors in accordance with By-Law Article XI, Section 11-3. Such petition shall be in writing and shall specify the findings and conclusions in such decision [of the Business Conduct Committee], which is the subject of the petition, together with the reasons that Respondent petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. Within 15 days after a Respondent's petition for review has been filed with the Secretary of the Exchange pursuant to By-Law Article XI, Section 11-1(a), Enforcement staff may submit to the Secretary a written response to the petition. A copy of the response must be served upon the Respondent. A Respondent has 15 days from the service of the response to file a reply with the Secretary and Enforcement staff.

(b) Conduct of Review.

(i) The review shall be conducted by the Board of Governors or an Advisory Committee thereof pursuant to By-Law Article XI, Section 11-3. If an Advisory Committee is appointed to conduct the review, it shall be composed pursuant to By-Law Article XI, Section 11-2. Any Board member who participated in a matter before the Business Conduct Committee or Hearing Panel may not participate in any review of that matter by the Board of Governors or an Advisory Committee. Unless the Board of Governors or the
Advisory Committee shall decide to hear oral arguments, such review shall be based solely upon the record and written exceptions filed by the parties. The review shall be [heard] conducted as soon as is practicable.

(ii) Should the Board of Governors conduct the review, then based upon such review, the Board of Governors by a majority vote of its members, shall decide to affirm, reverse or modify, in whole or in part the decision of the Hearing Officer pursuant to 960.6(c) or by the Hearing Panel pursuant to 960.8, as applicable. [of the Business Conduct Committee.] Such modification may include an increase or decrease of the sanction. The Board of Governors may not reverse, or modify, in whole or in part, the findings, conclusions and decision [of the Business Conduct Committee] if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 960.11, and shall be final and conclusive subject to Rule 960.9(c) and (d), as well as the provisions of the [Securities] Exchange Act [of 1934].

(iii) Should the review be conducted by an Advisory Committee, the Advisory Committee shall submit a written report to the Board of Governors. In such report, the Advisory Committee shall recommend to affirm, reverse or modify, in whole or in part, the decision of the Hearing Officer pursuant to Rule 960.6(c) or the [Business Conduct Committee] Hearing Panel pursuant to 960.8, as applicable. Such modification may include an increase or decrease of the sanction. The Advisory Committee may not reverse, or modify, in whole or in part, the findings, conclusions or decision [of the Business Conduct Committee] if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The Board of Governors by a majority vote of its members, shall decide to affirm, reject or modify, in whole or in part the recommendations of the Advisory Committee. Such modification may include an increase or decrease of the sanction. The Board of Governors may not reverse, or modify, in whole or in part, the findings, conclusions and decision of the Advisory Committee if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 960.11, and shall be final and conclusive subject to Rule 960.9(c) and (d), as well as to the provisions of the [Securities] Exchange Act [of 1934].

(c) Review on Motion of Board of Governors. The Board of Governors may on its own initiative order review of a decision made pursuant to Rule[s] 960.6(c) or 960.8 within 20 days after notice of the decision has been served on the Respondent. Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule. Should the Board of Governors vote to [disapprove] modify or reverse such decision [this modification or reversal], the Board shall make its own findings and issue a final decision of the Exchange. An Advisory Committee appointed by the Board of Governors may conduct such a review pursuant to By-Law Article XI, Section 11-3 and in accordance with the provisions of Rule 960.9.
(d) Petition by Enforcement Staff. An appeal of a decision made by the Hearing Officer pursuant to Rule[960.6(c) or by the Hearing Panel pursuant to Rule 960.8 may also be taken by the Enforcement staff by petitioning the Board of Governors, within 10 days after service of notice and a copy of the decision, for permission to proceed with such appeal in accordance with By-Law Article XI, Section 11-3. Such petition shall be in writing and shall specify the findings and conclusions of [the Business Conduct Committee] such decision, which are the subject of the petition, together with the reasons that Enforcement staff petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. If permission to appeal is granted, staff shall serve a copy of the petition on the Respondent within five days of permission to appeal being granted. Within 15 days Respondent may submit to the Board of Governors a written response to the petition. A copy of the response must be served upon the Exchange's Enforcement staff, who then has 15 days from the service of the response to file a reply with the Board of Governors and the Respondent.

* * *

**Rule 960.10.**
**Judgment and Sanctions**

(a) Sanctions.

(1) Members, member organizations and persons associated with or employed by members or member organizations shall (subject to any rules or order of the Securities and Exchange Commission) be appropriately disciplined for violations under these disciplinary rules by expulsion, suspension, fine, censure, limitations or termination as to activities, functions, operations, or association with a member or member organization, or any other fitting sanction.

(2) The Business Conduct Committee, Hearing Officer, and/or Hearing Panel, as applicable, shall refer to the Exchange's "Enforcement Sanctions User's Guide" ("Sanction Guidelines") when imposing sanctions for violations of options order handling rules. The Sanction Guidelines outline factors for the Business Conduct Committee, Hearing Officer and/or Hearing Panel, as applicable, to consider when reviewing violations of options order handling rules and imposing appropriate remedial sanctions.

(b) Effective Date of Judgment. Sanctions imposed under these disciplinary rules shall not become effective until the Exchange review process is completed or the decision otherwise becomes final. Pending effectiveness of a decision imposing sanctions on a Respondent, the [Business Conduct Committee] Hearing Officer or the Hearing Panel, as applicable, may impose such conditions and restrictions on the activities on such Respondent which it finds to be necessary or appropriate for the protection of the investing public, members, member organizations and the Exchange and its subsidiaries.
Rule 960.11.
Service of Notice and Extension of Time Limits

(a) Service of Notice. Any charges, notices, or other documents may be served upon a Respondent or Respondent’s Counsel either personally or by deposit in the United States mail, postage pre-paid via registered or certified mail or by courier service addressed to Respondent’s Counsel or the Respondent at his address as it appears on the books and records of the Exchange. Unless otherwise stated in these disciplinary rules, all documents required by these rules to be filed [with the Exchange] by any party [a Respondent] must be filed with the Hearing Panel with copies to all parties [Enforcement Department] and must be received by the [Exchange] Hearing Panel on the day prescribed by these rules.

(b) Extension of Time Limits. Any time limits imposed under these disciplinary rules, unless otherwise noted, for the submission of [answers] documentary evidence, petitions, requests for a hearing, or other materials may be extended by permission of the Business Conduct Committee or its designee, Hearing Officer, or appropriate committee before whom the matter is currently pending.

* * *

Rule 960.12.
Fairness and Impartiality of Board or Committee Members

(a) Disqualification on Own Motion. No Board member, or Committee member, Hearing Officer or Hearing Panelist (“member”) shall in any manner participate in any disciplinary proceeding if such individual cannot render a fair and impartial decision in the matter. In such case, that individual shall remove himself from any consideration of the matter.

(b) Disqualification On Order of Chair. Whenever any person has any reason to believe that a particular individual cannot render a fair and impartial decision in a disciplinary proceeding, such person shall give prompt written notice thereof to the appropriate Chair, specifying the grounds for contesting the qualification of such individual. In such case, the decision of the Chair shall be final and conclusive with respect to whether such individual participates in the determination of such matters.

* * *

Rule 970.
Floor Procedure Advices: Violations, Penalties, and Procedures

(a) In lieu of commencing a "disciplinary proceeding" as that term is used in Exchange
Rules 960.1-960.12, the Exchange may, subject to requirements set forth in this Rule, impose a fine, not to exceed $2,500, on any member, member organization, or any partner, officer, director or person employed by or associated with any member or member organization, for any violation of a Floor Procedure Advice of the Exchange, which violation the Exchange shall have determined is minor in nature. Any fine imposed pursuant to this Rule and not contested shall not be publicly reported to the members except as may be required by Rule 19d-1 under the Securities Exchange Act of 1934, and as may be required by any other regulatory authority.

(b) In any action taken by the Exchange pursuant to this Rule, the person against whom a fine is imposed shall be served with a written statement, signed by an authorized official of the Exchange's Market Surveillance Department on behalf of the Business Conduct Committee, setting forth (i) the Floor Procedure Advice(s) alleged to have been violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each violation; and (iv) the date by which such determination becomes final and such fine becomes due and payable to the Exchange[, ] or [rather,] when such determination must be contested, as provided in paragraph (d) hereunder, such date to be not less than seven business days after the date of service of the written statement.

(c) If the person against whom a fine is imposed pursuant to this Rule pays the fine, such payment shall be deemed to be a waiver by such person of his right to a disciplinary proceeding under Exchange Rules 960.1-[1]960.12 and any review of the matter by the Business Conduct Committee, an Exchange Hearing Panel, the Disciplinary Review Committee, or the Exchange Board of Governors.

(d) Any person against whom a fine is imposed pursuant to this Rule may contest the Exchange's determination by filing with the Department of the Exchange taking the action not later than the date by which such determination must be contested, a written response meeting the requirements of an "Answer" as provided in Rule 960.4, at which point the matter shall be referred to the Business Conduct Committee for [their] its consideration and determination.

(e) The Committee may then (a) decide that the matter be dismissed and the notice of alleged violation be rescinded; (b) decide that the notice, as issued, is valid, whereupon the alleged violator could either pay the fine or contest the matter before a [h]Hearing Panel; (c) decide that the notice, as issued, should be modified to specify either a higher or lower fine than the one on the notice as issued, whereupon the alleged violator could either pay the new fine or contest the matter before a [h]Hearing Panel; or (d) decide that the matter merits formal disciplinary action and authorize issuance of a Complaint, pursuant to Exchange Rule 960.2.

(f) If a disciplinary proceeding thereafter results, and the Hearing Panel determines that he has violated the Advice(s) as alleged, the Hearing Panel shall (a) be free to impose any disciplinary sanction provided for in Exchange Rules 960.1-960.12 and (b) determine whether the violation is minor in nature. If determined to be minor in nature, the violation(s) giving rise to the penalty shall not be publicly reported by the Exchange to
the members, except as may be required pursuant to Rule 19d-1 of the Securities Exchange Act of 1934 (Exchange Act), or as may be required by any other regulatory authority; if determined not to be minor in nature, the decision of the Hearing Panel and any penalty imposed shall be publicly reported to the members, in addition to any filing required by Rule 19d-1 of the Exchange Act, or any other regulatory authority, once such decision becomes "final" under Exchange Rules 960.1-960.12.

Commentary:

.01 For purposes of imposing fines under the Options Floor Procedure Advices ("OFPAs"), when the number of violations under Exchange Rules is determined based upon an exception-based surveillance program the Exchange may aggregate, or "batch," individual violations of order handling OFPAs, and consider such "batched" violations as a single Occurrence only in accordance with the guidelines set forth in the Exchange's Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. In the alternative, the Exchange may refer the matter to the Business Conduct Committee for possible disciplinary action when (i) the Exchange determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be so egregious that referral to the Business Conduct Committee for possible disciplinary action is appropriate.

*    *    *    *    *

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

2. Procedures of the Self-Regulatory Organization

The Board of Governors approved the proposal for filing with the Securities and Exchange Commission ("SEC" or "Commission") on September 7, 2005.

Questions and comments on the proposed rule change may be directed to Cynthia Hoekstra, Director, at (215) 496-5066 or Edith Hallahan, Deputy General Counsel, at (215) 496-5179.
3. **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

a. **Purpose**

   **Background:** Currently, pursuant to Exchange Rule 960.5(a), a hearing on the Statement of Charges is held before a Hearing Panel composed of three persons appointed by the Chairman of the BCC or the Chairman’s designee. The presiding person of each Hearing Panel is a member of the Committee. The other two persons on the Hearing Panel are members of the Exchange, or general partners or officers of member organizations, or such other persons whom the Chairman of the BCC or the Chairman’s designee considers to be qualified.

   Currently, pursuant to Exchange Rule 960.5(d), after the conclusion of the hearing, the Hearing Panel reviews the entire record of the proceeding and submits a written hearing report to the Committee containing proposed findings of fact, conclusions of violations and a recommendation as to appropriate sanctions, to be considered by the Committee at the next Committee meeting after the report is completed.

   After reviewing the entire record of the disciplinary proceeding, the BCC, by a majority of the members voting, determines whether the Respondent has committed violations and the appropriate sanctions, if any.\(^3\) The BCC then issues a written decision, including in its decision a statement of findings and conclusions, with the reasons therefor, upon all material issues presented in the record, and whether each violation within the disciplinary jurisdiction of the Exchange alleged in the statement of charges has occurred.

\(^3\) See Exchange Rule 960.8.
Hearing Officer

The Exchange proposes to establish a new permanent professional position of Hearing Officer. The responsibilities of the Hearing Officer would include, but are not limited to: presiding over hearings in contested disciplinary cases authorized by the Exchange’s BCC, conducting pre-hearing conferences, ruling on procedural or discovery matters, scheduling hearing sessions, making all necessary evidentiary or other rulings, (in consultation with the Hearing Panelists), regulating the conduct of the hearing, imposing appropriate sanctions for improper conduct by a party or a party’s representative, drafting and issuing decisions on behalf of the Hearing Panel and rendering decisions in connection with Summary Disposition Proceedings.\(^4\) The Hearing Officer would not be permitted to be involved in any manner in the investigation of possible misconduct, to participate in the consideration by the BCC of whether to institute a disciplinary action, to render a decision following a hearing without the concurrence of a majority of the Hearing Panel, rule upon requests to disqualify the Hearing Officer or any member of the Hearing Panel, or issue citations for violations of Exchange rules or floor procedure advices.\(^5\)

The Hearing Officer would report to the Audit Committee for all performance and compensation purposes to help ensure that the Hearing Officer is completely neutral and

\(^4\) See proposed Exchange Rule 960.6.

\(^5\) In addition, in accordance with By-Law Article X, Section 10-11, the jurisdiction of the Hearing Officer and Hearing Panel shall not extend to the enforcement of rules and regulations of the Floor Procedure Committee or the Options Committee relating to order, decorum, health, safety and welfare on the trading floors, or to hearings held by and sanctions imposed by such committees relating to such matters, except as permitted by the rules of the Exchange or any interpretation thereof, and any regulations promulgated thereunder.
accountable to the Audit Committee alone. The Hearing Officer would merely report to
the General Counsel or his or her designee to comply with policies and procedures
applicable to all employees of the Exchange, such as reporting vacation time or sick
leave.

**Hearing Panelists**

Consistent with current practice, the Hearing Panelists would be selected based on
their background, experience and training, which should qualify them to consider and
make determinations regarding the subject matter to be presented to the Hearing Panel.
Other factors to consider include the availability of the individual Hearing Panelists, the
extent of their prior service on Hearing Panels and any relationship between such persons
and the Respondent, which might make it inappropriate for such persons to serve on the
Hearing Panel. The BCC Chair, or the Chair’s designee, would select the Hearing
Panelists for each matter from a pool of qualified panelists.⁶

After being designated as a qualified panelist, the Exchange intends to have each
prospective panelist complete a mandatory training session to be conducted by the
Hearing Officer. Qualified panelists would serve for three-year terms. After that time, if
a panelist wished to continue serving, the panelist would be required to submit an
updated application, which would be reviewed by the BCC.

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⁶ The Exchange intends to form a “pool” of pre-qualified Hearing Panelists for contested
disciplinary cases. In order to form this pool, the staff intends to develop a questionnaire,
using as a model the questionnaire currently used by the NASD for potential members of
arbitration panels. Members of the BCC would not be eligible to serve as Hearing
Panelists. However, as discussed below in proposed Rule 960.5(a)(7), if the Hearing
Officer is unable to preside over the hearing for any reason, the Chair of the BCC shall
appoint a qualified replacement Hearing Officer for that hearing, which could possibly
include a member of the BCC.
Currently, pursuant to Exchange Rule 960.5(a)(4), Hearing Panelists may be compensated in extraordinary cases, as determined by the Chair of the BCC, in consultation with the Chairman of the Board of Governors. The Exchange proposes that Hearing Panelists be compensated for all hearing sessions and for one deliberation session per disciplinary proceeding. A hearing session would be defined as any meeting between the parties and Hearing Panelists, including pre-hearing conferences. Hearing Panelists would be compensated at a fixed rate for each session that lasts four hours or less. For example, if a hearing on a given day lasted a total of six hours, Hearing Panelists would be compensated for two hearing sessions. This fixed and non-negotiable rate would be the same for each hearing session, and for one deliberation session for which a Hearing Panel renders a decision, but no compensation would be paid for “study time” (i.e., reviewing materials in preparation for a pre-hearing conference or hearing). If a case settled prior to a hearing, panelists would not receive any compensation, unless a pre-hearing conference, (which is included in the definition of a hearing session and for which compensation would be given) was held. If a hearing were cancelled, the panelists would not be entitled to compensation, but would be reimbursed for any travel-related expenses incurred, if applicable. If a Hearing Panelist is also a member of the Board, any Board or Standing Committee meetings that are held on the same day as the hearing would be considered a single meeting for the purposes of compensation.

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7 Factors to be considered when determining whether a case is extraordinary include, but are not limited to, the anticipated length of time of the hearing; the complexity and serious nature of the matter; and the magnitude of the potential penalty.

8 Compensation for Hearing Panelists would be subject to a cap amount per day, regardless of the number of hearing sessions (or Board or Committee meetings attended).
Issuance of Decisions

If an Offer of Settlement (“Offer”) is submitted to the BCC before a hearing commences, even if the Hearing Panelists are selected, the Committee would still consider the Offer and, if accepted, issue a decision. If an Offer is submitted after a hearing commences, however, the Exchange staff would promptly submit its position with respect to such Offer. The Hearing Panelists would then determine whether to consider the Offer and, if considered, whether to accept or reject the Offer.9

A decision issued by the Hearing Panel would be considered final. Any appeal of the decision would be taken directly to the Exchange’s Board of Governors.

The purpose of the proposal is to replace the current BCC hearing process described above to make it more efficient. By having a permanent and independent Hearing Officer and pre-screened, qualified Hearing Panelists, the formal hearing process should be expedited and the sanctioning process reconciled so that sanctions for similar misconduct are imposed more uniformly given that the same Hearing Officer would preside over all hearings.

Pre-screening Hearing Panelists and compensating them should also help to ensure that qualified panelists are selected to serve on Exchange Hearing Panels. In addition, having the Hearing Panel issue a final decision directly, without having to go to the BCC for review and approval, should help expedite the issuance of decisions.

9 The BCC will continue to hear any current matters through their completion if a hearing has already commenced. Thus, if the proposed rule changes are approved by the Securities and Exchange Commission and implemented in the middle of an ongoing hearing, the BCC will hear that matter through its completion and will issue the decision accordingly.
The purpose of Amendment No. 1 is to clarify the proposed rule change, including the rule text.\textsuperscript{10}

b. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\textsuperscript{11} in general, and furthers the objectives of Sections 6(b)(5), 6(b)(6) and 6(b)(7) of the Act\textsuperscript{12} in particular, in that this proposal should help to: (i) protect investors and the public interest; (ii) appropriately discipline members, member organizations and persons associated with members or member organizations; and (iii) provide a fair procedure for the disciplining of members, member organizations and persons associated with members or member organizations.

4. **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. **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. **Extension of Time Period for Commission Action**

The Exchange does not consent to an extension of the time period for Commission action.

\textsuperscript{10} The Exchange’s proposed rule change, SR-Phlx-2005-65, Amendment No. 1, replaces SR-Phlx-2005-65 in its entirety.

\textsuperscript{11} 15 U.S.C. 78f(b).

\textsuperscript{12} 15 U.S.C. 78f(b)(5), (6) and (7).
7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

The Exchange requests accelerated effectiveness to implement, without undue delay, its rules relating to the Exchange’s hearing process and to expedite the appointment of a hearing officer, which should, in turn, create a more efficient hearing and sanctioning process.\(^{13}\)

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

The proposed rule change is similar to the rules of the National Association of Securities Dealers, Inc. ("NASD").\(^{14}\)

9. **Exhibits**

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

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\(^{14}\) See NASD Rule 9231 (the Chief Hearing Officer shall appoint a Hearing Panel or an Extended Hearing Panel to conduct the disciplinary proceeding and issue a decision).
SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-Phlx-2005-65)

Self-Regulatory Organizations; Notice of Filing and Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to its Business Conduct Committee and Disciplinary Rules

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) and Rule 19b-4 thereunder,\(^3\) proposes to amend Exchange By-Law Article X, Section 10-11, Business Conduct Committee and Exchange Rules 960 and 970 to: (1) establish a Hearing Officer position; (2) amend certain provisions relating to the retention and compensation of Hearing Panelists; (3) amend the hearing process as it relates to decisions issued by the Hearing Panel; and (4) make other minor, non-substantive changes to Exchange By-Law Article X, Section 10-11, Business Conduct Committee and Rules 960 and 970. Specifically, the proposal


\(^3\) 17 CFR 240.19b-4.
discussed below would create the new staff position of a “Hearing Officer,” who, along with two other Hearing Panelists, would hear contested disciplinary matters that previously were heard by the Business Conduct Committee ("BCC" or “Committee”).

The proposed amendments to By-Law Article X, Section 10-11 and Rules 960 and 970 are set forth below:

*Underlining indicates new text and brackets indicate deleted text*

**Sec. 10-11.**

**Business Conduct Committee**

(a) The Business Conduct Committee shall, in accordance with the Rules of the Board of Governors of the Exchange, have exclusive jurisdiction to:

(i) monitor compliance with the Exchange Act, the rules and regulations thereunder, these By-Laws and rules of the Exchange or any interpretation thereof, and the rules, regulations, resolutions and stated policies of the Board of Governors or any committee of the Exchange, by Members, participants, Member Organizations and participant organizations and persons associated with any such persons or organizations;

(ii) examine into the business conduct and financial condition of Members, participants, Member Organizations and participant organizations and persons associated with any such persons or organizations; and

(iii) authorize the initiation of any disciplinary actions or proceedings brought by the Exchange;

[(iv) conduct hearings and render decisions in summary disciplinary actions and proceedings;]

[(v) render decisions in summary disciplinary actions and proceedings;]

[(vi)]

(b) The Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) shall impose appropriate sanctions of expulsion, suspension, fine, censure or any other fitting sanction where the Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) finds that a violation within the disciplinary jurisdiction of the Exchange has been committed. The jurisdiction of this Committee and its designee (including a Hearing Officer or Hearing Panel) shall
not extend to the enforcement of rules and regulations of the Floor Procedure Committee or the Options Committee relating to order, decorum, health, safety and welfare on the trading floors, or to hearings held by and sanctions imposed by such committees relating to such matters, except as permitted by the rules of the Exchange or any interpretation thereof, and any regulations promulgated thereunder.

(b) The Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) shall have authority, whenever it shall appear that a Member Organization is in violation of Rule 703 of the Rules of the Board of Governors to direct a general partner(s) or an executive officer(s) of such Member Organization to appear before the Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) for examination upon forty-eight (48) hours notice, either oral or in writing and, after such examination, such Committee or Committee’s designee (including a Hearing Officer or Hearing Panel) shall have authority to suspend such Member Organization until the requirements of Rule 703 are fully met. Any such suspension directed by the Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) shall be subject to review by the Board of Governors. In the event of a reversal by the Board of Governors of the suspension imposed by such Committee or the Committee’s designee (including a Hearing Officer or Hearing Panel), a Member Organization or officer, partner, director (or person in a similar position) or stockholder thereof shall be prohibited from instituting a lawsuit in any forum against the Exchange or the members of the Business Conduct Committee, or the Committee’s designee (including a Hearing Officer or Hearing Panel), or hold the Exchange [or] any member of such Committee, or the Committee’s designee (including a Hearing Officer or Hearing Panel) liable in damages based in whole or in part upon the suspension imposed by such Committee or by the Committee’s designee (including a Hearing Officer or Hearing Panel).

(c) The Business Conduct Committee may prescribe regulations for the carrying of securities on margin by Members, participants and Member Organizations and participant organizations for customers; and it may also make such regulations in regard to the segregation or hypothecation of securities carried in customers' accounts as it deems advisable.

(d) The Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) may prohibit trading by a Member, participant or Member Organization or participant organization which is excessive in view of such person's or organization's capital.

(e) The Business Conduct Committee may require detailed financial reports of a Member, participant or Member Organization or participant organization, and such other operational reports as it may deem advisable.

(f) The Business Conduct Committee shall have supervision over the advertising of Members, participants and Member Organizations and participant organizations.
((gh)) The Business Conduct Committee shall consist of nine (9) members as follows: three (3) independent Governors; one (1) Member whose business is principally carried out on the equity floor; one (1) Member whose business is principally carried out on the equity options floor; and four (4) persons who are Members or persons associated with a Member Organization.

* * *

Rule 960.1.

Jurisdiction

(a) Any member, member organization, or any partner, officer, director or person employed by or associated with any member or member organization (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities [and] Exchange Act of 1934 (Exchange Act), the rules and regulations thereunder, the by-laws and rules of the Exchange or any interpretation thereof, and the rules, regulations, resolutions and stated policies of the Board of Governors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a member or member organization, or any other fitting sanction in accordance with the provisions of these disciplinary rules.

(b) An individual member, or a partner, officer, director or person employed by or associated with a member or member organization may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by employees under his supervision or by the member organization with which he is associated, as though such violations were his own. A member organization may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a member or other person who is associated with such member organization, as though such violation were its own.

(c) Any member, or any partner, officer, director, or person employed by or associated with a member or member organization, and any member organization shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's permit or foreign currency options participation or the termination of the employment by or the association with a member or member organization of such partner, officer, director or person, or following the deregistration of a member organization from the Exchange; provided, that the Exchange serves written notice to such former member, partner, officer, director, employee, associated person or member organization within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member, or as a partner, officer, director or person employed by or associated with a member or member organization.
organization, or prior to the deregistration of such member organization.

**Interpretations and Policies ...**

.01 The term "person associated with a member" or "associated person of a member" shall have the same meaning as in Section 3(a)(21) of the [Securities] Exchange Act of 1934.

.02 A summary suspension or other action taken pursuant to By-Laws Sections 8-1, 10-11, 14-5, 17-1, 17-2, and Rules 50, 60, or Section 6(d)(3) of the Exchange Act shall not be deemed to be disciplinary action under these disciplinary rules.

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**Rule 960.2.**

**Complaint and Investigation**

**Investigation and Authorization of Complaint**

(a) Initiation of Investigation. The Exchange shall investigate possible violations within the disciplinary jurisdiction of the Exchange upon instruction of either the Board, the Business Conduct Committee, the Chairman or other Exchange officials designated by the Chairman or upon receipt by the Exchange of a written accusation from a member, member organization or from any person which specifies in reasonable detail the facts which are the subject of the accusation.

(b) Cooperation with Investigation or Examination. Each member, member organization, or person associated with a member shall promptly comply with any request of the Exchange's [Market] Surveillance Department, Investigations Department, Examination Department, Enforcement Department or any officer of the Exchange for information, documents or testimony; each member, member organization or person associated with a member or member organization shall not otherwise impede or delay an Exchange investigation into matters within its disciplinary jurisdiction.

(c) Right to Counsel. A member, member organization or person associated with a member shall have the right to be represented by counsel in connection with requests for information, documents or testimony and throughout the course of any disciplinary proceeding and the review thereof or any hearing concerning a summary action.

(d) Report. Whenever the staff of the Exchange has a reasonable basis to believe that a violation within the disciplinary jurisdiction of the Exchange has occurred, a written report shall be submitted to the Business Conduct Committee specifying the violations which are believed to have occurred and those facts which gave rise to these violations.

(e) Notice and Statement. Prior to submitting its report, the staff shall notify the person(s) who is the subject of the report ("Subject") of the general nature of the allegations and of
the specific provisions of the Exchange Act, rules and regulations promulgated thereunder, or the Certificate of Incorporation, by-laws or rules of the Exchange or any interpretation thereof or any resolution of the Board regulating the conduct of business on the Exchange, that appear to have been violated. The staff shall also inform the Subject that the report will be reviewed by the Committee. The Subject may then submit a written statement to the Committee concerning why no disciplinary action should be taken. To assist a Subject in preparing such a written statement, he shall have access to any documents and other materials in the investigative file of the Exchange that were furnished by him or his agents.

(f)(i) Determination to Initiate Charges. Whenever it shall appear to the Business Conduct Committee that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange and that disciplinary action is warranted, the Business Conduct Committee shall direct the staff of the Exchange to prepare a statement of charges. Whenever the Business Conduct Committee determines that violations within the disciplinary jurisdiction of theExchange have not occurred or that disciplinary action is not warranted it shall so instruct the staff and its instruction not to initiate disciplinary action along with the reasons for not initiating such action shall be recorded in the minutes of the Business Conduct Committee.

(ii) When the number of violations under Exchange Rules is determined based upon an exception-based surveillance program, the Exchange may aggregate, or "batch," individual violations of Exchange order handling rules and consider such "batched" violations as a single offense only in accordance with the guidelines set forth in the Exchange's Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. In the alternative, the Exchange may refer the matter to the Business Conduct Committee for possible disciplinary action when (i) the Exchange determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be so egregious that referral to the Business Conduct Committee for possible disciplinary action is appropriate.

* * *

Rule 960.3
Charges

Statement of Charges

The Statement of Charges shall set forth the specific provisions within the disciplinary jurisdiction of the Exchange alleged to have been violated, the persons or organization alleged to have committed each of the violations ("Respondents") and the specific acts which give rise to the alleged violations. A copy of the Statement of Charges shall be served upon each of the Respondents in accordance with Rule 960.11.

* * *
Rule 960.4.

Answer

A Respondent shall have 15 business days after service of the Statement of Charges to file a written answer thereto. The Answer shall specifically admit or deny each allegation contained in the Statement of Charges, and a Respondent shall be deemed to have admitted any allegation contained not specifically denied. The Answer may also contain any defense which a Respondent wishes to submit and may be accompanied by documents in support of his Answer or defense. A Respondent must state in his Answer whether he requests a hearing concerning the statement of charges. In lieu of requesting a hearing, a Respondent may request that the matter be decided upon written submissions, whereupon the Hearing Officer (as defined in Rule 960.5) shall decide whether to grant such request and determine a schedule for each party to make their respective submissions. A Respondent who does not request a hearing or that the matter be decided upon written submissions, shall be deemed to have waived his right to request a hearing or have his written submissions, other than the Answer and any documents in support of his Answer or defense, be considered by a Hearing Panel (as defined in Rule 960.5). The Hearing Panel (Business Conduct Committee) may thereafter prepare its decision in accordance with Rule 960.8. In the event a Respondent fails to file an Answer within the specified time, or has not within the specified time, requested and obtained from Enforcement Staff (the Business Conduct Committee) an extension of time to answer, the charges shall be considered to be admitted and the Hearing Panel (Business Conduct Committee) may prepare its decision in accordance with Rule 960.8.

* * *

Rule 960.5.

Hearing

(a) [Participants and Selection of] Hearing Panels.

1. Request for a Hearing --A hearing on the Statement of Charges shall, at the request of Respondent in his Answer, or upon motion of the Business Conduct Committee, be held before a Hearing Panel composed of three persons [to be appointed by the Chairman of the Business Conduct Committee or their designee]. Should the hearing be at the request of the Respondent, [counsel for the] Exchange staff must provide written notice to the Chair[man] of the Business Conduct Committee or the Chair’s [their] designee which requests the naming of a [h]earing [p]anel within 5 [10] business days of receiving Respondent’s request for a hearing.

2. Selection of Hearing Panel --The Chair[man] of the Business Conduct Committee or [their] the Chair’s designee shall name a Hearing Panel within [5] 10 business days of either (i) receipt of notice from [counsel for the] Exchange staff which requests the naming of a Hearing Panel, or (ii) upon motion of the Business Conduct Committee for naming of a Hearing Panel. The Chair[man] of the Business Conduct Committee or
the Chair’s designee shall then promptly notify [counsel for the] Exchange staff and Respondent of the names of the members of the Hearing Panel.

3. Hearing Officer--The presiding person of each Hearing Panel shall be the Hearing Officer [a member of the Business Conduct Committee]. The responsibilities of the Hearing Officer include, but are not limited to: presiding over hearings in contested disciplinary cases authorized by the Business Conduct Committee; conducting pre-hearing conferences; ruling on procedural or discovery matters; scheduling hearing sessions; making all necessary evidentiary or other rulings (in consultation with the Hearing Panelists); regulating the conduct of the hearing; imposing appropriate sanctions for improper conduct by a party or a party’s representative; drafting and issuing decisions on behalf of the Hearing Panel; and rendering decisions in connection with Summary Disposition Proceedings. The Hearing Officer will not be permitted to be involved in any manner in the investigation of possible misconduct, to participate in the consideration by the Business Conduct Committee of whether to institute a disciplinary action, to render a decision following a hearing without the concurrence of a majority of the Hearing Panel, rule upon requests to disqualify the Hearing Officer or any member of the Hearing Panel or issue citations for violations of Exchange rules or floor procedure advices.

4. The other two persons on the Hearing Panel shall be members of the Exchange, or general partners or officers of member organizations, or such other persons whom the Chair[man] of the Business Conduct Committee or [their] the Chair’s designee considers to be qualified. The Chair[man] of the Committee or [their] the Chair’s designee shall select these two other persons from individuals [those persons] who [shall] have been deemed qualified to serve as a Hearing Panelist [designated by the Chairman of the Board of Governors to serve on such hearing panels]. In making such selections the Chair[man] or the Chair’s [their] designee shall, to the extent practicable, choose individuals whose background, experience and training qualify them to consider and make determinations regarding the subject matter to be presented to the Hearing Panel. The [He] Chair shall also consider such factors as the availability of the individual Hearing Panelists [hearing officers], the extent of their prior service on Hearing Panels and any relationship between such persons and a [r]espondent which might make it inappropriate for such persons to serve on the Hearing Panel.

After being designated as a qualified Hearing Panelist, each prospective Hearing Panelist shall complete a mandatory training session to be conducted by the Hearing Officer. Qualified Hearing Panelists would serve for three-year terms. After that time, if a Hearing Panelist wished to continue serving, the Hearing Panelist must submit an updated application for review and approval by the Business Conduct Committee.

[3][5]. Notice --Promptly after the selection of the Hearing Panelists, the Chair[man] of the Business Conduct Committee or [their] the Chair’s designee shall cause written notice thereof to be given to the [accused] Respondent. If any person involved in the disciplinary proceeding shall have knowledge of a relationship between himself and any person selected for service on the Hearing Panel which might result in such Panelist being unable to render a fair and impartial decision, he shall give prompt written notice
thereof to the Chair[man] of the Business Conduct Committee or [their] the Chair’s designee, specifying the nature of such relationship and the grounds for contesting the qualification of such person to serve on the Hearing Panel. The decision of the Chair[man] of the Business Conduct Committee or [their] the Chair’s designee shall be final and conclusive with respect to the qualification of any person to serve on the Hearing Panel.

[4] Compensation of Hearing Panelists -- Hearing Panelists appointed by the Chair[man] of the Business Conduct Committee may be compensated for any hearing sessions, including pre-hearing conferences, and for one deliberation session per disciplinary proceeding for which a Hearing Panel renders a decision. The fixed and non-negotiable rate to be paid to the Hearing Panelists shall be the same for each hearing session that lasts four hours or less and for one deliberation session. A hearing session is defined as any meeting between the parties and the Hearing Panel. In extraordinary cases, as determined by the Chairman of the Business Conduct Committee, in consultation with the Chairman of the Board of Governors. Factors to be considered when determining whether a case is extraordinary include, but are not limited to, the anticipated length of time of the hearing; the complexity and serious nature of the matter; and the magnitude of the potential penalty. Compensation will be paid at the same rate and on the same terms as Board of Governors members' compensation for service on a Standing Committee with the understanding that any multiple meetings and/or hearings on the same day. If a Hearing Panelist is also a member of the Board of Governors, any Board of Governors or Standing Committee meetings that are held on the same day as the hearing would be considered a single meeting for the purposes of compensation.

7. Hearing Officer Availability--If the Hearing Officer is unable to preside over the hearing for any reason, the Chair of the Business Conduct Committee shall appoint a qualified replacement Hearing Officer for that hearing. The replacement Hearing Officer will be selected from a pre-screened pool of qualified candidates.

(b) Notice of Hearing and Pre-Hearing Procedures.

1. [Scheduling of a] Hearing Date -- A hearing on the Statement of Charges shall [be scheduled for] commence no later than 120 days after the date of filing of a written Answer by the Respondent wherein a hearing is requested. Should the hearing be at the request of the Respondent, counsel for the Exchange staff must provide notice to the Chair[man] of the Business Conduct Committee or the[ir] Chair’s designee which requests the setting of a hearing date [within 10 business days of receiving Respondents request for a hearing]. The request for a hearing date shall be made in writing to the Chair[man] of the Business Conduct Committee or the[ir] Chair’s designee by (i) [counsel for the] Exchange staff, or (ii) on the motion of the Business Conduct Committee. The 120 day deadline for the commencement of a hearing may be extended by the Hearing Officer for good cause.

2. Notice -- The Respondent shall be given at least 15 business days notice of the time and place of the hearing.

3. Requests for Adjournments -- A request by the Respondent or Exchange staff for an
adjournment of the hearing date shall be in writing and will be considered by the Hearing Officer for just cause. [If the request is made by the Respondent, said request shall be presented to the presiding person of the Hearing Panel with a copy to counsel for the Exchange, who shall enter the request into the Respondent's file. If the request is made by counsel for the Exchange, said request shall be presented to the presiding person of the Hearing Panel, with a copy to the Respondent, and in Respondent's file.] The [presiding person of the] Hearing Officer [Panel] shall promptly consider the request for an adjournment for just cause, rule on the request and inform the parties, in writing if time permits, as to whether the request was, or was not, granted. In the event that the request for an adjournment for just cause is granted, the Hearing Officer [presiding person of the Hearing Panel] shall, at that time, schedule a new hearing date and so inform the parties of the new date.

4. Exchange of Evidence – [The] Exchange staff and the Respondent shall [, not less than 8 business days in advance of the scheduled hearing date,] furnish to the members of the Hearing Panel and to each other (i) copies of all documentary evidence each intends to present at the hearing, and (ii) a list of witnesses, including names, addresses and telephone numbers, that each intends to call at the [H]earing on such date as prescribed by the Hearing Officer, but in any event, not less than 8 business days in advance of the scheduled hearing date.

5. Pre-Hearing Conferences -- Where appropriate, the Hearing Officer [presiding person of the Hearing Panel] shall schedule one or more [a] pre-hearing conference(s) to be held on such date(s) as prescribed by the Hearing Officer, but in any event not less than 8 business days in advance of the scheduled hearing date, to be attended by [representatives of the] Exchange staff, each of the Respondents and [a member of] the Hearing Officer and/or Hearing Panel. The pre-hearing conference shall be held for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding. At such conference, and if they have not done so previously, [the] Exchange staff and the Respondents shall furnish to the Hearing Officer and/or Hearing Panel and to each other (i) copies of all documentary evidence [such] each intends to present at the [H]earing, and (ii) a list of witnesses, including names, addresses and telephone numbers, that each intends to call at the [H]earing. [The] Exchange staff and Respondents shall also attempt to stipulate to the authenticity of documents and to facts and issues not in dispute, and any other items which will serve to expedite the hearing of the matter.

(c) Conduct of Hearing. The Hearing Officer [Panel] (in consultation with the Hearing Panelists) shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by [a representative of] the Exchange staff who, along with Respondent, may present evidence and produce witnesses who shall testify under oath and shall be subject to cross examination and questioning by the Hearing Panel. The Hearing Panel may, on its own motion, request the production of documentary evidence and witnesses and may also question witnesses. A transcript of the hearing shall be made and shall become a part of the record. The costs of the making of such a transcript, including, but not limited to, the costs for the court reporter, reproduction of the transcript
and producing copies thereof, shall be equally borne by the Exchange and by Respondent. [Counsel for the] Exchange staff shall provide a copy of the transcript of the hearing to the Hearing Officer [each member of the Hearing Panel] within 5 business days of receiving the transcript. [The Respondent shall be issued a bill for its portion of the costs along with its copy of the transcript.]

[(d) Recommendation of Hearing Panel. Based on its review of the entire record of the proceeding, the Hearing Panel shall submit a written hearing report to the Business Conduct Committee containing: (i) proposed findings of fact concerning the allegations in the statement of charges; (ii) conclusions as to whether a violation within the disciplinary jurisdiction of the Exchange has occurred and an enumeration of such violations; and (iii) recommendations as to appropriate sanctions. The Hearing Panel shall complete such a hearing report no later than 45 days after counsel for the Exchange has served the members of the Hearing Panel with a copy of the transcript of the hearing. The hearing report shall be presented to the Business Conduct Committee at the next Business Conduct Committee meeting after the report is completed.]

**Interpretations and Policies:**

**.01 Intervention.** Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Hearing Panel that he has an interest in the subject of the hearing and that the disposition of the matter, may, as a practical matter, impair or impede his ability to protect that interest. Also, the Hearing Panel may in its discretion permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing shall file with the Hearing Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought.

**.02 The Hearing Panel, in exercising its discretion concerning intervention, shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.**

**.03 Attendance.** Any person not otherwise a party or licensed counsel representing a party may not attend a hearing unless specifically allowed by the Hearing Panel.

* * *

**Rule 960.6.**
Summary Proceedings

Summary Disciplinary Disposition Proceedings

(a) Initiation of Summary Disciplinary Disposition Proceeding. The Business Conduct Committee, A Hearing Officer may make a summary decision in a disciplinary proceeding that violations within the disciplinary jurisdiction of the Exchange have occurred and impose sanctions upon those culpable for such conduct whenever:

(i) any member, or member organization or person associated with or employed by a member or member organization has admitted to such a violation; or

(ii) there is no dispute concerning those material facts which give rise to such violations.

(b) Notice to Respondent. The Exchange shall serve notice and a copy of such a summary decision upon Respondents in accordance with Rule 960.11. Respondents may, no later than 15 business days after service, file with the Exchange a written reply to the summary decision, including documentary support, asking the Hearing Officer to set aside any of the findings made or sanctions imposed in the summary decision. Respondents may include a request for a hearing in their reply. If a reply is not filed within the specified time period, the summary decision shall become final and the Respondents shall have waived any and all rights of review. Hearings held pursuant to this section shall be governed by those procedures contained in Rule 960.5. When a Respondent has admitted to committing a violation, any further proceeding pursuant to these disciplinary rules shall be limited to the issue of the propriety of the sanction imposed.

(c) Further Proceeding. The Hearing Officer [Business Conduct Committee] shall set aside a decision in a summary proceeding if a Respondent establishes that an issue of material fact or law exists as to any of the findings contained or sanctions imposed in the summary decision. Should a summary decision be set aside on these grounds, a hearing will then be scheduled on the merits of the issues in dispute and the case shall proceed in accordance with Rules 960.5, 960.8 and 960.9. If the Hearing Officer [Business Conduct Committee] decides that no issues of material fact or law exist with respect to the summary decision, the summary decision becomes final and may be appealed in accordance with Rule 960.9.

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Rule 960.7.
Offers of Settlement

At any time during a period not to exceed 120 [one hundred and twenty calendar] days immediately following the date of filing of Respondent’s written Answer [service of a statement of charges upon a respondent in accordance with Rule 960.11], a Respondent may submit to the Business Conduct Committee a written offer of settlement which shall
contain a proposed stipulation of facts and shall consent to specified sanctions. Where the Business Conduct Committee accepts an offer of settlement, it shall issue a decision [including findings and conclusions] and impose sanctions consistent with the terms of such offer. Where the Business Conduct Committee rejects an offer of settlement, it shall notify the Respondent in accordance with Rule 960.11 and the matter shall proceed as if such offer had not been made, and the offer and all documents relating thereto shall not become part of the record. A decision of the Business Conduct Committee issued upon acceptance of an offer of settlement as well as its determination [of the Committee] whether to accept or reject such an offer shall be final, and the Respondent may not seek review thereof. A copy of the decision shall be promptly served on the Respondents in accordance with Rule 960.11.

Interpretation and Policies:

.01 [A hearing may be held during the one hundred and twenty day period, but if it was not, the hearing will be scheduled as soon as practicable thereafter.] If a Respondent submits an offer of settlement after the 120 [one hundred and twenty] day period, the Business Conduct Committee may consider such offer and determine appropriate sanctions as long as its consideration does not delay the hearing in the matter. If a Respondent submits an offer of settlement after the hearing has commenced, the Exchange staff shall promptly submit its position with respect to such offer of settlement. The Hearing Panel shall then determine whether to consider the offer of settlement and, if considered, whether to accept or reject such offer.

*   *   *

Rule 960.8. Decision

Except as provided in Rule 960.7, the [Business Conduct Committee] Hearing Panel shall review the entire record of the disciplinary proceeding or, if appropriate, the written submissions if the Hearing Officer granted the Respondent’s request to decide the matter upon such written submissions. After this Review, the [Business Conduct Committee] Hearing Panel, by a majority [of the members voting] vote, shall determine whether Respondents have committed violations and the appropriate sanctions, if any, therefor. The [Business Conduct Committee] Hearing Panel shall thereafter issue a written decision in conformity with its determination, including in its decision a statement of findings and conclusions, with the reasons therefor, upon all material issues presented in the record, and whether each violation within the disciplinary jurisdiction of the Exchange alleged in the statement of charges has occurred. The decision shall be prepared, absent extraordinary circumstances, within 60 days after Exchange staff has served the Hearing Officer and/or members of the Hearing Panel with a copy of the transcript of the hearing. A copy of the [D]decision shall be promptly served on the Respondents in accordance with Rule 960.11.
Rule 960.9.
Review

(a) Petition by Respondent. A Respondent shall have 10 days after service of notice and a copy of a decision made by the Hearing Officer pursuant to Rule[s] 960.6(c) [and] or by the Hearing Panel pursuant to Rule 960.8 to appeal such decision to the Board of Governors in accordance with By-Law Article XI, Section 11-3. Such petition shall be in writing and shall specify the findings and conclusions in such decision [of the Business Conduct Committee], which is the subject of the petition, together with the reasons that Respondent petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. Within 15 days after a Respondent's petition for review has been filed with the Secretary of the Exchange pursuant to By-Law Article XI, Section 11-1(a), Enforcement staff may submit to the Secretary a written response to the petition. A copy of the response must be served upon the Respondent. A Respondent has 15 days from the service of the response to file a reply with the Secretary and Enforcement staff.

(b) Conduct of Review.

(i) The review shall be conducted by the Board of Governors or an Advisory Committee thereof pursuant to By-Law Article XI, Section 11-3. If an Advisory Committee is appointed to conduct the review, it shall be composed pursuant to By-Law Article XI, Section 11-2. Any Board member who participated in a matter before the Business Conduct Committee or Hearing Panel may not participate in any review of that matter by the Board of Governors or an Advisory Committee. Unless the Board of Governors or the Advisory Committee shall decide to hear oral arguments, such review shall be based solely upon the record and written exceptions filed by the parties. The review shall be conducted as soon as is practicable.

(ii) Should the Board of Governors conduct the review, then based upon such review, the Board of Governors by a majority vote of its members, shall decide to affirm, reverse or modify, in whole or in part the decision of the Hearing Officer pursuant to 960.6(c) or by the Hearing Panel pursuant to 960.8, as applicable, [of the Business Conduct Committee.] Such modification may include an increase or decrease of the sanction. The Board of Governors may not reverse, or modify, in whole or in part, the findings, conclusions and decision [of the Business Conduct Committee] if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 960.11, and shall be final and conclusive subject to Rule 960.9(c) and (d), as well as the provisions of the [Securities] Exchange Act [of 1934].

(iii) Should the review be conducted by an Advisory Committee, the Advisory Committee shall submit a written report to the Board of Governors. In such report, the
Advisory Committee shall recommend to affirm, reverse or modify, in whole or in part, the decision of the Hearing Officer pursuant to Rule 960.6(c) or the [Business Conduct Committee] Hearing Panel pursuant to 960.8, as applicable. Such modification may include an increase or decrease of the sanction. The Advisory Committee may not reverse, or modify, in whole or in part, the findings, conclusions or decision [of the Business Conduct Committee] if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The Board of Governors by a majority vote of its members, shall decide to affirm, reject or modify, in whole or in part the recommendations of the Advisory Committee. Such modification may include an increase or decrease of the sanction. The Board of Governors may not reverse, or modify, in whole or in part, the findings, conclusions and decision of the Advisory Committee if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 960.11, and shall be final and conclusive subject to Rule 960.9(c) and (d), as well as to the provisions of the [Securities] Exchange Act [of 1934].

(c) Review on Motion of Board of Governors. The Board of Governors may on its own initiative order review of a decision made pursuant to Rule[s] 960.6(c) or 960.8 within 20 days after notice of the decision has been served on the Respondent. Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule. Should the Board of Governors vote to [disapprove] modify or reverse such decision [this modification or reversal], the Board shall make its own findings and issue a final decision of the Exchange. An Advisory Committee appointed by the Board of Governors may conduct such a review pursuant to By-Law Article XI, Section 11-3 and in accordance with the provisions of Rule 960.9.

(d) Petition by Enforcement Staff. An appeal of a decision made by the Hearing Officer pursuant to Rule[s] 960.6(c) or by the Hearing Panel pursuant to Rule 960.8 may also be taken by the Enforcement staff by petitioning the Board of Governors, within 10 days after service of notice and a copy of the decision, for permission to proceed with such appeal in accordance with By-Law Article XI, Section 11-3. Such petition shall be in writing and shall specify the findings and conclusions of [the Business Conduct Committee] such decision, which are the subject of the petition, together with the reasons that Enforcement staff petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. If permission to appeal is granted, staff shall serve a copy of the petition on the Respondent within five days of permission to appeal being granted. Within 15 days Respondent may submit to the Board of Governors a written response to the petition. A copy of the response must be served upon the Exchange's Enforcement staff, who then has 15 days from the service of the response to file a reply with the Board of Governors and the Respondent.

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**Rule 960.10. Judgment and Sanctions**

(a) Sanctions.

(1) Members, member organizations and persons associated with or employed by members or member organizations shall (subject to any rules or order of the Securities and Exchange Commission) be appropriately disciplined for violations under these disciplinary rules by expulsion, suspension, fine, censure, limitations or termination as to activities, functions, operations, or association with a member or member organization, or any other fitting sanction.

(2) The Business Conduct Committee, Hearing Officer, and/or Hearing Panel, as applicable, shall refer to the Exchange's "Enforcement Sanctions User's Guide" ("Sanction Guidelines") when imposing sanctions for violations of options order handling rules. The Sanction Guidelines outline factors for the Business Conduct Committee, Hearing Officer and/or Hearing Panel, as applicable, to consider when reviewing violations of options order handling rules and imposing appropriate remedial sanctions.

(b) Effective Date of Judgment. Sanctions imposed under these disciplinary rules shall not become effective until the Exchange review process is completed or the decision otherwise becomes final. Pending effectiveness of a decision imposing sanctions on a Respondent, the Hearing Officer or the Hearing Panel, as applicable, may impose such conditions and restrictions on the activities on such Respondent which it finds to be necessary or appropriate for the protection of the investing public, members, member organizations and the Exchange and its subsidiaries.

* * *

**Rule 960.11. Service of Notice and Extension of Time Limits**

(a) Service of Notice. Any charges, notices, or other documents may be served upon a Respondent or Respondent’s Counsel either personally or by deposit in the United States mail, postage pre-paid via registered or certified mail or by courier service addressed to Respondent’s Counsel or the Respondent at his address as it appears on the books and records of the Exchange. Unless otherwise stated in these disciplinary rules, all documents required by these rules to be filed [with the Exchange] by any party [a Respondent] must be filed with the Hearing Panel with copies to all parties [Enforcement Department] and must be received by the Hearing Panel on the day prescribed by these rules.

(b) Extension of Time Limits. Any time limits imposed under these disciplinary rules, unless otherwise noted, for the submission of [answers] documentary evidence, petitions, requests for a hearing, or other materials may be extended by permission of the Business
Conduct Committee or its designee, Hearing Officer, or appropriate committee before whom the matter is currently pending.

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Rule 960.12.  
Fairness and Impartiality of Board or Committee Members

(a) Disqualification on Own Motion. No Board member, or Committee member, Hearing Officer or Hearing Panelist ("member") shall in any manner participate in any disciplinary proceeding if such member individual cannot render a fair and impartial decision in the matter. In such case, the member individual shall remove himself from any consideration of the matter.

(b) Disqualification On Order of Chair[man]. Whenever any person has any reason to believe that a particular member individual cannot render a fair and impartial decision in a disciplinary proceeding, such person shall give prompt written notice thereof to the appropriate Chair[man], specifying the grounds for contesting the qualification of such member individual. In such case, the decision of the Chair[man] shall be final and conclusive with respect to whether such individual participates in the determination of such matters.

*   *   *

Rule 970.  
Floor Procedure Advices: Violations, Penalties, and Procedures

(a) In lieu of commencing a "disciplinary proceeding" as that term is used in Exchange Rules 960.1-960.12, the Exchange may, subject to requirements set forth in this Rule, impose a fine, not to exceed $2,500, on any member, member organization, or any partner, officer, director or person employed by or associated with any member or member organization, for any violation of a Floor Procedure Advice of the Exchange, which violation the Exchange shall have determined is minor in nature. Any fine imposed pursuant to this Rule and not contested shall not be publicly reported to the members except as may be required by Rule 19d-1 under the Securities Exchange Act of 1934, and as may be required by any other regulatory authority.

(b) In any action taken by the Exchange pursuant to this Rule, the person against whom a fine is imposed shall be served with a written statement, signed by an authorized official of the Exchange's Market Surveillance Department on behalf of the Business Conduct Committee, setting forth (i) the Floor Procedure Advice(s) alleged to have been violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each violation; and (iv) the date by which such determination becomes final and such fine becomes due and payable to the Exchange[,] or [rather,] when such determination must be contested, as provided in paragraph (d) hereunder, such date to be not less than seven business days after the date of service of the written statement.
(c) If the person against whom a fine is imposed pursuant to this Rule pays the fine, such payment shall be deemed to be a waiver by such person of his right to a disciplinary proceeding under Exchange Rules 960.1-960.12 and any review of the matter by the Business Conduct Committee, an Exchange Hearing Panel, the Disciplinary Review Committee, or the Exchange Board of Governors.

(d) Any person against whom a fine is imposed pursuant to this Rule may contest the Exchange's determination by filing with the Department of the Exchange taking the action not later than the date by which such determination must be contested, a written response meeting the requirements of an "Answer" as provided in Rule 960.4, at which point the matter shall be referred to the Business Conduct Committee for [their] its consideration and determination.

(e) The Committee may then (a) decide that the matter be dismissed and the notice of alleged violation be rescinded; (b) decide that the notice, as issued, is valid, whereupon the alleged violator could either pay the fine or contest the matter before a [h]Hearing [p]Panel; (c) decide that the notice, as issued, should be modified to specify either a higher or lower fine than the one on the notice as issued, whereupon the alleged violator could either pay the new fine or contest the matter before a [h]Hearing[p]Panel; or (d) decide that the matter merits formal disciplinary action and authorize issuance of a Complaint, pursuant to Exchange Rule 960.2.

(f) If a disciplinary proceeding thereafter results, and the Hearing Panel determines that he has violated the Advice(s) as alleged, the Hearing Panel shall (a) be free to impose any disciplinary sanction provided for in Exchange Rules 960.1-960.12 and (b) determine whether the violation is minor in nature. If determined to be minor in nature, the violation(s) giving rise to the penalty shall not be publicly reported by the Exchange to the members, except as may be required pursuant to Rule 19d-1 of the Securities Exchange Act of 1934 (Exchange Act), or as may be required by any other regulatory authority; if determined not to be minor in nature, the decision of the Hearing Panel and any penalty imposed shall be publicly reported to the members, in addition to any filing required by Rule 19d-1 of the Exchange Act, or any other regulatory authority, once such decision becomes "final" under Exchange Rules 960.1-960.12.

Commentary:

.01 For purposes of imposing fines under the Options Floor Procedure Advices ("OFPAs"), when the number of violations under Exchange Rules is determined based upon an exception-based surveillance program the Exchange may aggregate, or "batch," individual violations of order handling OFPAs, and consider such "batched" violations as a single Occurrence only in accordance with the guidelines set forth in the Exchange's Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. In the alternative, the Exchange may refer the matter to the Business Conduct Committee for possible disciplinary action when (i) the Exchange determines that there exists a pattern or practice of violative conduct
without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be so egregious that referral to the Business Conduct Committee for possible disciplinary action is appropriate.

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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

Background: Currently, pursuant to Exchange Rule 960.5(a), a hearing on the Statement of Charges is held before a Hearing Panel composed of three persons appointed by the Chairman of the BCC or the Chairman’s designee. The presiding person of each Hearing Panel is a member of the Committee. The other two persons on the Hearing Panel are members of the Exchange, or general partners or officers of member organizations, or such other persons whom the Chairman of the BCC or the Chairman’s designee considers to be qualified.

Currently, pursuant to Exchange Rule 960.5(d), after the conclusion of the hearing, the Hearing Panel reviews the entire record of the proceeding and submits a written hearing report to the Committee containing proposed findings of fact, conclusions
of violations and a recommendation as to appropriate sanctions, to be considered by the Committee at the next Committee meeting after the report is completed.

After reviewing the entire record of the disciplinary proceeding, the BCC, by a majority of the members voting, determines whether the Respondent has committed violations and the appropriate sanctions, if any. The BCC then issues a written decision, including in its decision a statement of findings and conclusions, with the reasons therefor, upon all material issues presented in the record, and whether each violation within the disciplinary jurisdiction of the Exchange alleged in the statement of charges has occurred.

**Hearing Officer**

The Exchange proposes to establish a new permanent professional position of Hearing Officer. The responsibilities of the Hearing Officer would include, but are not limited to: presiding over hearings in contested disciplinary cases authorized by the Exchange’s BCC, conducting pre-hearing conferences, ruling on procedural or discovery matters, scheduling hearing sessions, making all necessary evidentiary or other rulings, (in consultation with the Hearing Panelists), regulating the conduct of the hearing, imposing appropriate sanctions for improper conduct by a party or a party’s representative, drafting and issuing decisions on behalf of the Hearing Panel and rendering decisions in connection with Summary Disposition Proceedings. The Hearing Officer would not be permitted to be involved in any manner in the investigation of possible misconduct, to participate in the consideration by the BCC of whether to

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4 See Exchange Rule 960.8.

5 See proposed Exchange Rule 960.6.
institute a disciplinary action, to render a decision following a hearing without the concurrence of a majority of the Hearing Panel, rule upon requests to disqualify the Hearing Officer or any member of the Hearing Panel, or issue citations for violations of Exchange rules or floor procedure advices.  

The Hearing Officer would report to the Audit Committee for all performance and compensation purposes to help ensure that the Hearing Officer is completely neutral and accountable to the Audit Committee alone. The Hearing Officer would merely report to the General Counsel or his or her designee to comply with policies and procedures applicable to all employees of the Exchange, such as reporting vacation time or sick leave.

**Hearing Panelists**

Consistent with current practice, the Hearing Panelists would be selected based on their background, experience and training, which should qualify them to consider and make determinations regarding the subject matter to be presented to the Hearing Panel. Other factors to consider include the availability of the individual Hearing Panelists, the extent of their prior service on Hearing Panels and any relationship between such persons and the Respondent, which might make it inappropriate for such persons to serve on the

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6 In addition, in accordance with By-Law Article X, Section 10-11, the jurisdiction of the Hearing Officer and Hearing Panel shall not extend to the enforcement of rules and regulations of the Floor Procedure Committee or the Options Committee relating to order, decorum, health, safety and welfare on the trading floors, or to hearings held by and sanctions imposed by such committees relating to such matters, except as permitted by the rules of the Exchange or any interpretation thereof, and any regulations promulgated thereunder.
Hearing Panel. The BCC Chair, or the Chair’s designee, would select the Hearing Panelists for each matter from a pool of qualified panelists.\(^7\)

After being designated as a qualified panelist, the Exchange intends to have each prospective panelist complete a mandatory training session to be conducted by the Hearing Officer. Qualified panelists would serve for three-year terms. After that time, if a panelist wished to continue serving, the panelist would be required to submit an updated application, which would be reviewed by the BCC.

Currently, pursuant to Exchange Rule 960.5(a)(4), Hearing Panelists may be compensated in extraordinary cases, as determined by the Chair of the BCC, in consultation with the Chairman of the Board of Governors.\(^8\) The Exchange proposes that Hearing Panelists be compensated for all hearing sessions and for one deliberation session per disciplinary proceeding. A hearing session would be defined as any meeting between the parties and Hearing Panelists, including pre-hearing conferences. Hearing Panelists would be compensated at a fixed rate for each session that lasts four hours or less.\(^9\) For example, if a hearing on a given day lasted a total of six hours, Hearing

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\(^7\) The Exchange intends to form a “pool” of pre-qualified Hearing Panelists for contested disciplinary cases. In order to form this pool, the staff intends to develop a questionnaire, using as a model the questionnaire currently used by the NASD for potential members of arbitration panels. Members of the BCC would not be eligible to serve as Hearing Panelists. However, as discussed below in proposed Rule 960.5(a)(7), if the Hearing Officer is unable to preside over the hearing for any reason, the Chair of the BCC shall appoint a qualified replacement Hearing Officer for that hearing, which could possibly include a member of the BCC.

\(^8\) Factors to be considered when determining whether a case is extraordinary include, but are not limited to, the anticipated length of time of the hearing; the complexity and serious nature of the matter; and the magnitude of the potential penalty.

\(^9\) Compensation for Hearing Panelists would be subject to a cap amount per day, regardless of the number of hearing sessions (or Board or Committee meetings attended).
Panelists would be compensated for two hearing sessions. This fixed and non-negotiable rate would be the same for each hearing session, and for one deliberation session for which a Hearing Panel renders a decision, but no compensation would be paid for “study time” (i.e., reviewing materials in preparation for a pre-hearing conference or hearing). If a case settled prior to a hearing, panelists would not receive any compensation, unless a pre-hearing conference, (which is included in the definition of a hearing session and for which compensation would be given) was held. If a hearing were cancelled, the panelists would not be entitled to compensation, but would be reimbursed for any travel-related expenses incurred, if applicable. If a Hearing Panelist is also a member of the Board, any Board or Standing Committee meetings that are held on the same day as the hearing would be considered a single meeting for the purposes of compensation.

**Issuance of Decisions**

If an Offer of Settlement (“Offer”) is submitted to the BCC before a hearing commences, even if the Hearing Panelists are selected, the Committee would still consider the Offer and, if accepted, issue a decision. If an Offer is submitted after a hearing commences, however, the Exchange staff would promptly submit its position with respect to such Offer. The Hearing Panelists would then determine whether to consider the Offer and, if considered, whether to accept or reject the Offer.¹⁰

A decision issued by the Hearing Panel would be considered final. Any appeal of the decision would be taken directly to the Exchange’s Board of Governors.

¹⁰ The BCC will continue to hear any current matters through their completion if a hearing has already commenced. Thus, if the proposed rule changes are approved by the Securities and Exchange Commission and implemented in the middle of an ongoing hearing, the BCC will hear that matter through its completion and will issue the decision accordingly.
The purpose of the proposal is to replace the current BCC hearing process described above to make it more efficient. By having a permanent and independent Hearing Officer and pre-screened, qualified Hearing Panelists, the formal hearing process should be expedited and the sanctioning process reconciled so that sanctions for similar misconduct are imposed more uniformly given that the same Hearing Officer would preside over all hearings.

Pre-screening Hearing Panelists and compensating them should also help to ensure that qualified panelists are selected to serve on Exchange Hearing Panels. In addition, having the Hearing Panel issue a final decision directly, without having to go to the BCC for review and approval, should help expedite the issuance of decisions.

The purpose of Amendment No. 1 is to clarify the proposed rule change, including the rule text.\(^{11}\)

2. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^{12}\) in general, and furthers the objectives of Sections 6(b)(5), 6(b)(6) and 6(b)(7) of the Act\(^{13}\) in particular, in that this proposal should help to: (i) protect investors and the public interest; (ii) appropriately discipline members, member organizations and persons associated with members or member organizations; and (iii) provide a fair procedure for the disciplining of members, member organizations and persons associated with members or member organizations.

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\(^{11}\) The Exchange’s proposed rule change, SR-Phlx-2005-65, Amendment No. 1, replaces SR-Phlx-2005-65 in its entirety.


\(^{13}\) 15 U.S.C. 78f(b)(5) and (7).
B. 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.

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

The Exchange requests accelerated effectiveness to implement, without undue delay, its rules relating to the Exchange’s hearing process and to expedite the appointment of a hearing officer, which should, in turn, create a more efficient hearing and sanctioning process.14

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

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Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2005-65 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-2005-65. 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-2005-65 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.\textsuperscript{15}

\begin{flushright}
Nancy M. Morris  
Secretary
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\textsuperscript{15} 17 CFR 200.30-3(a)(12).