Proposed Rule Change by Philadelphia Stock Exchange

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

Initial Amendment Withdrawal

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

Pilot Extension of Time Period for Commission Action Date Expires

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

Description

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

Phlx proposes adopting a rule concerning regulatory services agreements.

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 John Last Name Dayton
Title Director and Counsel
E-mail john.dayton@phlx.com
Telephone (215) 496-5162 Fax

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 04/24/2006
By John Dayton

(Note)

(Note)

Director and Counsel

(Note)

(Note)

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

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 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.

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.

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 self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item 1 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.

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.
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 adopt a rule concerning regulatory services agreements ("RSAs"), in which the Exchange would contract another self-regulatory organization ("SRO") for the performance of certain of Phlx’s regulatory functions.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit I and the text of the proposed Exchange Rule is set forth below:

Underling indicates additions

**Rule 980. Regulatory Services Agreements**

The Board may authorize any officer, on behalf of the Exchange, subject to the approval of the Board, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Securities Exchange Act of 1934. Any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision shall affect the oversight of such other self-regulatory organization by the Securities and Exchange Commission. Notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide.


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

   The Executive Committee, pursuant to delegated authority, approved the proposal for filing with the Securities and Exchange Commission ("SEC" or "Commission") on April 20, 2006.

   Questions and comments on the proposed rule change may be directed to John Dayton, Director and Counsel, at (215) 496-5162 or Edith Hallahan, Senior Vice President and 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**

   The purpose of the proposed rule change is to enhance the Phlx’s ability to carry out its regulatory obligations under the Act by clarifying the Phlx’s ability to contract with another SRO for regulatory services. Under any RSA with another SRO, Phlx would remain an SRO registered under Section 6 of the Act\(^3\) and therefore will continue to have statutory authority and responsibility for enforcing compliance by its members and persons associated with its members with the Act, the rules thereunder and the rules of the Exchange.

   This rule change would have immediate applicability with respect to a RSA between Phlx, the Chicago Board Options Exchange ("CBOE"), and other options markets participating in the Options Regulatory Surveillance Agreement ("ORSA"). Phlx has determined that to best discharge its SRO responsibilities, it will contract with the CBOE, which is subject to Commission oversight pursuant to Section 6\(^4\) and 19\(^5\) of

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4 Id.
the Act, for the CBOE to provide certain regulatory services to Phlx as set forth in the RSA. In performing services under the RSA, the CBOE will be operating pursuant to the statutory SRO responsibilities of Phlx under Section 6\(^6\) and 19\(^7\), as well as performing for itself its own SRO responsibilities. The proposed rule change specifically states that any action taken by another SRO or its employees or authorized agents operating on behalf of Phlx pursuant to a RSA with the Exchange (e.g., the CBOE) will be deemed an action taken by the Exchange. Phlx will, nonetheless, retain ultimate responsibility for performance of its SRO duties under the RSA and the proposed rule change states that the Exchange shall retain ultimate legal responsibility for and control of its SRO responsibilities.

b. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^8\) in general, and furthers the objectives of Section 6(b)(1), 6(b)(6) and 6(b)(7) of the Act\(^9\) in particular, in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; it will help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder and the rule of the Exchange;

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and it will provide a fair procedure for the disciplining of members and persons
associated with members.

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

   The Phlx 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.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

   Because the foregoing proposed rule change does not:

   (i) Significantly affect the protection of investors or the public interest;

   (ii) Impose any significant burden on competition; and

   (iii) Become operative for 30 days from the date on which it was filed, or such
shorter time as the Commission may designate, it has become effective pursuant to
Section 19(b)(3)(A) of the Act\(^\text{10}\) and Rule 19b-4(f)(6) thereunder.\(^\text{11}\) The Phlx requests
that the Commission waive the five-day pre-filing notice requirement and the 30-day
operative delay and make the proposed rule change operative upon filing. The Phlx

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believes that the earlier operative date is consistent with the protection of investors and
the public interest because the proposed rule change is based upon a proposed rule
change of the Boston Stock Exchange, Inc. (“BSE”).\textsuperscript{12}

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

   The proposed rule change is based on the rules of BSE.\textsuperscript{13}

9. **Exhibits**

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

\textsuperscript{12} See Securities Exchange Act Release No. 53436 (March 7, 2006), 71 FR 13194 (March

\textsuperscript{13} Id.
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 ______________________ 2006, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Phlx, pursuant to Section 19(b)(1) of the Act\(^3\) and Rule 19b-4 thereunder,\(^4\) proposes to adopt a rule concerning regulatory services agreements ("RSAs"), in which the Exchange would contract another self-regulatory organization ("SRO") for the performance of certain of Phlx’s regulatory functions.

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The proposed Exchange Rule is set forth below:

Underling indicates additions

Rule 980. Regulatory Services Agreements

The Board may authorize any officer, on behalf of the Exchange, subject to the approval of the Board, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Securities Exchange Act of 1934. Any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision shall affect the oversight of such other self-regulatory organization by the Securities and Exchange Commission. Notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide.

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

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to enhance the Phlx’s ability to carry out its regulatory obligations under the Act by clarifying the Phlx’s ability to contract with another SRO for regulatory services. Under any RSA with another SRO, Phlx
would remain an SRO registered under Section 6 of the Act\(^5\) and therefore will continue to have statutory authority and responsibility for enforcing compliance by its members and persons associated with its members with the Act, the rules thereunder and the rules of the Exchange.

This rule change would have immediate applicability with respect to a RSA between Phlx, the Chicago Board Options Exchange ("CBOE"), and other options markets participating in the Options Regulatory Surveillance Agreement ("ORSA"). Phlx has determined that to best discharge its SRO responsibilities, it will contract with the CBOE, which is subject to Commission oversight pursuant to Section 6\(^6\) and 19\(^7\) of the Act, for the CBOE to provide certain regulatory services to Phlx as set forth in the RSA. In performing services under the RSA, the CBOE will be operating pursuant to the statutory SRO responsibilities of Phlx under Section 6\(^8\) and 19\(^9\), as well as performing for itself its own SRO responsibilities. The proposed rule change specifically states that any action taken by another SRO or its employees or authorized agents operating on behalf of Phlx pursuant to a RSA with the Exchange (e.g., the CBOE) will be deemed an action taken by the Exchange. Phlx will, nonetheless, retain ultimate responsibility for performance of its SRO duties under the RSA and the proposed rule change states that


\(^6\) Id.


the Exchange shall retain ultimate legal responsibility for and control of its SRO responsibilities.

2. **Statutory Basis**

   The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^\text{10}\) in general, and furthers the objectives of Section 6(b)(1), 6(b)(6) and 6(b)(7) of the Act\(^\text{11}\) in particular, in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; it will help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder and the rule of the Exchange; and it will provide a fair procedure for the disciplining of members and persons associated with members.

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**

   Because the foregoing proposed rule change does not:

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\(^{10}\) 15 U.S.C. 78f(b).

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act\textsuperscript{12} and Rule 19b-4(f)(6) thereunder.\textsuperscript{13} The Phlx requests that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay and make the proposed rule change operative upon filing. The Phlx believes that the earlier operative date is consistent with the protection of investors and the public interest because the proposed rule change is based upon a proposed rule change of the Boston Stock Exchange, Inc. (“BSE”).\textsuperscript{14}

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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:


\textsuperscript{13} 17 CFR 240.19b-4(f)(6).

Electronic comments:

• Use the Commission’s Internet comment form
  (http://www.sec.gov/rules/sro.shtml); or

• Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2006-26 on the subject line.

Paper comments:

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2006-26. 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-2006-26 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}

Nancy M. Morris  
Secretary

\textsuperscript{15} 17 CFR 200.30-3(a)(12).