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

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

Date Expires

Description

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

Adopting a fee for the late filing of annually audited financial statements (Rule 712)

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 Vice President
E-mail cynthia.hoekstra@phlx.com
Telephone (215) 496-5066 Fax (215) 496-6729

Signature

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

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

Date 12/21/2006

By Cynthia Hoekstra

(Vice President)

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.
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.

<table>
<thead>
<tr>
<th>Exhibit 1 - Notice of Proposed Rule Change</th>
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| 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).

<table>
<thead>
<tr>
<th>Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications</th>
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</table>
| 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.

<table>
<thead>
<tr>
<th>Exhibit 3 - Form, Report, or Questionnaire</th>
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| 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.

<table>
<thead>
<tr>
<th>Exhibit 4 - Marked Copies</th>
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| 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.

<table>
<thead>
<tr>
<th>Exhibit 5 - Proposed Rule Text</th>
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| 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.

<table>
<thead>
<tr>
<th>Partial Amendment</th>
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</table>
| 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 amend Phlx Rule 712, *Independent Audit*, to allow for the imposition of a fee to be assessed for the late filing of an annually audited financial statement ("annual audit").

The proposed new language is set forth below, with new text underlined:

Rules of the Board of Governors

* * * * *

Independent Audit

Rule 712. Each member organization doing any business with the public shall at least once each calendar year cause to be made an audit of its affairs, conducted in accordance with applicable audit requirements of the Securities and Exchange Commission and such other requirements as deemed appropriate by the Exchange, by independent public accountants and shall have such accountants prepare an answer to the financial questionnaire of the Exchange based upon such audit.

Pursuant to Rule 17a-5(d), promulgated under the Exchange Act, all broker-dealers are required to file annually audited financial statements ("Annual Audits") with their Designated Examining Authority and the SEC, no more than 60 days after the date of the year end financial statements. A member organization unable to meet the filing deadline for its Annual Audit as a result of exceptional circumstances may request an extension of time, in writing, prior to the filing due date. Annual Audits not received by the Exchange by the due date, or revised due date if an extension has been granted, will be subject to a late fee as set forth below for each week or any part thereof that the Annual Audit has not been filed, as calculated based on the due date or revised due date for filing the Annual Audit. (Implemented on a running three-year basis.)

(i) $100 per week for the first late filing in a three-year period.

(ii) $300 per week for the second late filing in a three-year period.

(iii) $1,000 per week for the third late filing in a three-year period.

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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 November 22, 2006.

Questions and comments on the proposed rule change may be directed to Cynthia Hoekstra, at (215) 496-5066 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**

      Currently, Rule 712 sets forth the provisions governing the requirements for an annual audit to be conducted in accordance with audit requirements as set forth by the Securities and Exchange Commission and other requirements as deemed appropriate by the Exchange. The purpose of the proposed amendment is to encourage the prompt filing of annual audits by those member organizations designated to the Exchange for examining purposes through the assessment of a late filing fee. Thus, the Exchange may issue progressively higher fees for all subsequent violations within the running three-year time period.³

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³ The Exchange may present repeated or aggravated failures to file such annual audits on a timely basis to the Exchange’s Business Conduct Committee for disciplinary action under Exchange Rules.
b. **Statutory Basis**

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act\(^4\) in general, and furthers the objectives of Section 6(b)(4) of the Act\(^5\) in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange 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)**

The foregoing proposed rule change establishes or changes a due, fee, or other charge applicable only to a member pursuant to Section 19(b)(3)(A)(ii) of the Act\(^6\) and Rule 19b-4(f)(2)\(^7\) thereunder. Accordingly, the proposal will take effect upon filing with


the Commission. 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.

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 New York Stock Exchange LLC (“NYSE”) and the National Association of Securities Dealers, Inc. (“NASD”).

9. **Exhibits**

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

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8 *See NYSE Rule 418, Audit, and Schedule A to the NASD By-Laws, Section 4, Fees.*
Exhibit 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-Phlx-2006-88)


Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\), and Rule 19b-4 thereunder,\(^2\) 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 amend Phlx Rule 712, Independent Audit, to allow for the imposition of a fee to be assessed for the late filing of an annually audited financial statement ("annual audit").


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**

Currently, Rule 712 sets forth the provisions governing the requirements for an annual audit to be conducted in accordance with audit requirements as set forth by the Securities and Exchange Commission and other requirements as deemed appropriate by the Exchange. The purpose of the proposed amendment is to encourage the prompt filing of annual audits by those member organizations designated to the Exchange for examining purposes through the assessment of a late filing fee. Thus, the Exchange may issue progressively higher fees for all subsequent violations within the running three-year time period.  

2. **Statutory Basis**

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(4) of 15 U.S.C. 78f(b).

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5 The Exchange may present repeated or aggravated failures to file such annual audits on a timely basis to the Exchange’s Business Conduct Committee for disciplinary action under Exchange Rules.

the Act\textsuperscript{7} in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act\textsuperscript{8} and paragraph (f)(2) of Rule 19b-4\textsuperscript{9} thereunder. 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{9} 17 CFR 240.19b-4(f)(2).
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-2006-88 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-2006-88. 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-2006-88 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{10}

Nancy M. Morris  
Secretary

\textsuperscript{10} 17 CFR 200.30-3(a)(12).