

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41553; File No. SR-PHLX-98-23]

Self-Regulatory Organizations: Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2 and 4 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change Relating to By-Law Article XI, § 11-1—Appeals; Article XII, § 12-4—Application; and Article XV, § 15-3—Disposition of Proceeds of Sale of Membership

June 23, 1999.

I. Introduction

On August 18, 1998, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to permit the Board of Governors ("Board") to review the validity and amount of claims asserted against a membership and to hear appeals from adverse Admissions Committee decisions.³

On September 16, 1998, the proposed rule change, which included Amendment No. 1, was published for comment in the **Federal Register**.⁴ No comments were received on the proposal. The PHLX submitted Amendment No. 2 to the proposed rule change on October 22, 1998,⁵

Amendment No. 3 on May 25, 1999,⁶ and Amendment No. 4 on June 22, 1999.⁷ This notice and order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment No. 3.

II. Description of the Proposal

The PHLX has proposed a By-Law amendment to Article XV, § 15-3, Disposition of Proceeds of Sale of Membership, to permit the Board, rather than the Arbitration Committee or a panel thereof, to determine the validity and amount of claims asserted against a membership pursuant to the specified order of claims enumerated in Section 15-3 of the By-Laws. This proposed By-Law amendment, as recommended by the Arbitration and Executive Committees of the Board, seeks to conform the By-Law with procedures adopted by other registered national securities exchanges⁸ and provides for Board oversight of seat proceeds disposition.

The Board will make its decision after an advisory committee consisting of three governors, of whom at least two are non-industry governors, examines the claims asserted against the membership and gives an advisory opinion to the Board.⁹ The advisory committee will examine the validity of claims based on the written submission of the claimants and respondents.¹⁰ Claimants and respondents may, however, request an oral argument before the advisory committee.¹¹ The Board will determine the payment of claims based upon the written record before the advisory committee.¹²

Additionally, the Exchange proposes to amend Article XI, § 11-1, Appeals,

and Article XII, § 12-4, Application, to provide that an adverse Admissions Committee decision be appealed to the Board. These proposed amendments seek to conform the By-Laws with procedures adopted by other exchanges wherein appeals are taken to the Board or heard by a panel of the Board subject to ratification, such as CBOE Rule 19.5 and American Stock Exchange LLC ("AMEX"), Constitution, Article IV, § 1(g). Thus, the proposal creates a right of appeal from Admissions Committee decisions.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ Specifically, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,¹⁴ because it removes impediments to and perfects the mechanism of a free and open market and a national market system protects investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Because the Board is vested with all of the powers necessary for the management of the business and affairs of the Exchange and the regulation of the business conduct of members of the Exchange,¹⁵ the Commission believes that the Board, rather than the Arbitration Committee or a panel thereof, is the most appropriate venue for making decisions regarding the disposition of seat proceeds. In addition, the Commission notes that the Board's oversight of the disposition of proceeds is similar to the rules adopted by certain other self-regulatory organizations ("SROs").¹⁶

The Commission also finds that the proposal is consistent with the requirements of Section 6(b)(7)¹⁷ in that the Board's oversight of Admissions Committee decisions provides a fair procedure for appealing decisions denying membership to any person seeking membership therein. By providing the opportunity to appeal adverse decisions, the proposal ensures that applicants have an additional opportunity to be heard. The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposal was originally submitted on June 24, 1998, however, the PHLX failed to include the circulars as required by Form 19b-4. See Form 19b-4, 3 Fed. Sec. L. (CCH) ¶ 33,351. The Exchange subsequently submitted Amendment No. 1 that included the circulars and made technical changes to the proposed rule language. Letter from Murray L. Ross, Vice President and Secretary, PHLX, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation ("Division"), Commission, dated August 17, 1998 ("Amendment No. 1"). In addition, the PHLX agreed to additional technical changes to accurately reflect the differences between the proposed rule language and the PHLX's current rule language. Telephone conversation between Murray L. Ross, Vice President and Secretary, PHLX and Karl Varner, Attorney, Division, Commission, on September 1, 1998.

⁴ Securities and Exchange Act Release No. 40420 (Sept. 9, 1998), 63 FR 49627.

⁵ In Amendment No. 2, the Exchange agreed to additional technical changes to accurately reflect the differences between the proposed rule language and the PHLX's current rule language and to grant an extension of time for Commission action on the proposed rule change. Letters from Murray L. Ross, Vice President and Secretary, PHLX, to Karl Varner,

Special Counsel, Division, Commission, dated October 21, 1998 (collectively "Amendment No. 2"). The Act does not require notice and comment for technical amendments.

⁶ In Amendment No. 3, the Exchange clarified that an advisory committee of three governors, of whom at least two will be non-industry governors, will examine the validity of claims asserted against the membership and give an advisory opinion to the Board of Governors. Letter from Murray L. Ross, Vice President and Secretary, PHLX, to Karl Varner, Special Counsel, Division, Commission, dated May 24, 1999 ("Amendment No. 3").

⁷ In Amendment No. 4, the Exchange agreed to additional technical changes to accurately reflect the differences between the proposed rule language and the PHLX's current rule language. Letter from Murray L. Ross, Vice President and Secretary, PHLX, to Karl Varner, Special Counsel, Division, Commission, dated June 21, 1999 ("Amendment No. 4"). The Act does not require notice and comment for technical amendments.

⁸ See Chicago Board Options Exchange ("CBOE") Rule 3.15 and New York Stock Exchange, Inc. ("NYSE"), Constitution, Article II, Sec. 11.

⁹ See Amendment No. 3, *Supra* Note 6.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ PHLX Article IV, § 4-4(a).

¹⁶ See CBOE Rule 3.15 and NYSE, Constitution, Article II, Sec. 11.

¹⁷ 15 U.S.C. 78f(b)(7).

Commission also notes that the Board's oversight of Admissions Committee decisions is similar to the rules adopted by certain other SROs.¹⁸

The Commission finds Amendment No. 3 consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act, because it removes impediments to and perfects the mechanism of a free and open market and a national market system. Amendment No. 3 ensures that the advisory committee reviewing the validity of claims and giving an advisory opinion to the Board is balanced with the appointment of two non-industry governors to the committee.

The Commission finds good cause to approve Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. Specifically, Amendment No. 3, merely clarifies the administrative procedures for reviewing the validity of claims asserted against the membership, thus, adding greater transparency to the review process. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,¹⁹ to approve Amendment No. 3 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549-0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

the principal office of the exchange. All submissions should refer to File No. SR-PHLX-98-23 and should be submitted by July 21, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-PHLX-98-23), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-16643 Filed 6-29-99; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3193]

State of Alabama

Jefferson County and the contiguous counties of Bibb, Blount, Saint Clair, Shelby, Tuscaloosa, and Walker in the State of Alabama constitute a disaster area as a result of damages caused by flash flooding that occurred on June 14, 1999. Applications for loans for physical damages may be filed until the close of business on August 20, 1999 and for economic injury until the close of business on March 21, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 319306 for physical damage and 9D1200 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 21, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99-16609 Filed 6-29-99; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3185]

State of Colorado; Amendment #2

In accordance with a notice received from the Federal Emergency Management Agency dated June 17, 1999, the above-numbered Declaration is hereby amended to expand the incident type for this disaster to include landslides and mudslides, in addition to severe storms and flooding, beginning on April 29 and continuing through May 19, 1999.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 15, 1999, and for economic injury the deadline is February 17, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 18, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99-16610 Filed 6-29-99; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3192]

State of Illinois

Coles County and the contiguous counties of Clark, Cumberland, Douglas, Edgar, Moultrie and Shelby in the State of Illinois constitute a disaster area as a result of damages caused by severe storms and flooding that occurred on June 1, 1999. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on August 16, 1999 and for economic injury until the close of business on March 17, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437

¹⁸ See CBOE Rule 19.5 and AMEX, Constitution, Article IV, § 1(g).

¹⁹ 15 U.S.C. 78(f)(5) and 78s(b).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3 (a)(12).