Additionally, the Exchange proposes to revise PCXE Rule 7.7(a)[26] to reflect the proposed changes to PCXE Rules 7.7(b) and 7.36(b).

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[27] in general, and Section 6(b)(5) of the Act,[28] in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest.

*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 that is 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*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR–PCX–2003–46 and should be submitted by November 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010–01–P**

[26] PCXE Rule 7.7(a) provides that ''[t]he names of ETP Holders bidding for or offering securities through the use of the facilities of the Corporation shall not be transmitted from the facilities of the Corporation to a non-holder of an ETP. No ETP Holder having the right to trade through the facilities of the Corporation and who has been a party to or has knowledge of an execution shall be under obligation to divulge the name of the buying or selling firm in any transaction.''

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48601; File No. SR–Phlx–2003–51]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Listing Standards Regarding Issuers' Audit Committees and Delisting Procedures

October 8, 2003.

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 July 14, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

The Phlx proposes to amend Phlx Rule 849, Audit Committee/Conflicts of Interest, and Phlx Rule 811, Delisting Policies and Procedures. The majority of the proposed rule changes are intended to comply with the requirements of new Commission Rule 10A–3 under the Act.[3] Specifically, the new listing standards proposed to be adopted by the Exchange pursuant to Commission Rule 10A–3 would require that:

(1) Each member of the audit committee of the issuer must be independent according to specified criteria (proposed Phlx Rule 849(b)(1));[4]

(2) The audit committee of each issuer must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer, and each such registered public accounting firm must report directly to the audit committee (proposed Phlx Rule 849(b)(2));

(3) Each audit committee must establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters (proposed Phlx Rule 849(b)(3));

(4) Each audit committee must have the authority to engage independent counsel and other advisors, as it determines necessary to carry out its duties (proposed Phlx Rule 849(b)(4)); and

(5) Each issuer must provide appropriate funding for the audit committee (proposed Phlx Rule 849(b)(5)).

Additional changes relating to audit committee charters, audit committee

[3] 17 CFR 240.10A–3.

[4] Currently, Phlx Rule 849 requires listed companies to maintain audit committees, a majority of the members of which are ''independent directors'' as defined in Phlx Rule 851. This current requirement would remain in effect pending the implementation of the higher standards proposed in this rule change. (Phlx Rule 851 requires listed issuers to maintain a minimum of two independent directors on their boards. It also defines ''independent director'' as a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.)

composition requirements, audit committee approval of related party transactions, and revisions to the Exchange's delisting rule are also proposed.[5]

Below is the text of the proposed rule change. Proposed new language is italicized; deletions are in brackets.

Rule 849. Audit Committee/Conflicts of Interest

Rule 849

*(a)* A listed company shall establish and maintain an audit committee, a majority of the members of which shall be independent directors, as defined in Rule 851. [The audit committee shall conduct an appropriate review of all related party transactions on an ongoing basis in order to review for potential conflict of interest situations]. *The requirements set forth in this Rule 849(a) shall continue to apply pending the implementation of the new requirements set forth in 849(b)–(j) and Commentary Sections (1)–(4). Listed issuers must be in compliance with such new requirements, subject to any applicable exemptions set forth therein, by the following dates: (A) July 31, 2005 for foreign private issuers and small business issuers as defined in Commission Rule 12b–2 under the Securities Exchange Act of 1934 (the ''Act''); and (B) for all other listed issuers, the earlier of the listed issuer's first annual shareholders meeting after January 15, 2004, or October 31, 2004.*

*(b) Listing Standards Relating to Audit Committees. Each issuer of securities listed on the Exchange must have, and certify that it has and will continue to have, an audit committee, as defined in Section 3(a)(58) of the Securities Exchange Act of 1934, of at least three members each of whom meet the following criteria.*

*(1) Independence.*

*(i) Each member of the audit committee must be a member of the board of directors of the listed issuer, and must otherwise be independent; provided that, where a listed issuer is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each member of the audit committee is a member of the board of directors of at least one of such dual holding companies. The following restrictions apply to every audit committee member:*

*(A) Employees. A director who is an employee (including non-employee executive officers) of the company or any of its affiliates may not serve on the audit committee until three years following the termination of his or her employment. In the event the employment relationship is with a former parent or predecessor of the company, the director could serve on the audit committee after three years following the termination of the relationship between the company and the former parent or predecessor. ''Affiliate'' for purposes of this subsection (A) includes a subsidiary, sibling company, predecessor, parent company, or former parent company.*

*(B) Business Relationship. A director (a) who is a partner, controlling shareholder, or executive officer of an organization that has a business relationship with the company, or (b) who has a direct business relationship with the company (e.g., as a consultant), may serve on the audit committee only if the issuer's board of directors determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. In making a determination regarding the independence of a director pursuant to this paragraph, the board of directors should consider, among other things, the materiality of the relationship to the issuer, to the director, and, if applicable, to the organization with which the director is affiliated.*

*''Business relationships'' can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has such a relationship. The director may serve on the audit committee without the above-referenced board of directors' determination after three years following the termination of, as applicable, either (a) the relationship between the organization with which the director is affiliated and the company, (b) the relationship between the director and his or her partnership status, shareholder interest or executive officer position, or (c) the direct business relationship between the director and the company.*

*(C) Cross Compensation Committee Link. A director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.*

*(D) Immediate Family. A director who is an Immediate Family member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship. ''Immediate Family'' includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, and anyone (other than employees) who shares such person's home.*

*(ii) Independence requirements for non-investment company issuers. In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is not an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:*

*(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof, provided that compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or*

*(B) Be an affiliated person of the issuer or any subsidiary thereof.*

*(iii) Independence requirements for investment company issuers. In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:*

*(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any*

[5] The Exchange intends to file additional proposed rule changes relating to other corporate governance listing standards, including board independence and independent committees, issuers' codes of conduct, and announcement of going concern qualification in the near future. The New York Stock Exchange (''NYSE'') and the National Association of Securities Dealers (''NASD'') have proposed a number of rule changes in these areas. *See, e.g.*, Securities Exchange Act Release Nos. 47516 (March 17, 2003), 68 FR 14451 (March 25, 2003) (SR–NASD–2002–141, a proposed rule change relating to board independence and independent committees); 48123 (July 2, 2003), 68 FR 41191 (July 10, 2003) (SR–NASD–2002–77, disclosure of audit opinions with going concern qualifications); 48125 (July 2, 2003), 68 FR 41194 (July 10, 2003) (SR–NASD–2002–139 and Amendment No. 1 thereto, requiring listed companies to adopt a code of conduct for all directors, officers, and employees); and 47672 (April 11, 2003), 68 FR 19051 (April 17, 2003) (SR–NYSE–2002–33 and Amendment No. 1 thereto, proposing corporate governance rule changes). The Commission has recently approved NYSE and Nasdaq proposals relating to shareholder approval of equity compensation plans. *See* Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (approving SR–NYSE–2002–46 and SR–NASD–2002–140). The Exchange filed a proposed rule change relating to equity compensation on September 30, 2003 (File No. SR–Phlx–2003–67).

*subsidiary thereof, provided that compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or*

*(B) Be an ''interested person'' of the issuer as defined in section 2(a)(19) of the Investment Company Act of 1940.*

*(iv) Exemptions from the independence requirements.*

*(A) For an issuer listing securities pursuant to a registration statement under section 12 of the Act, or for an issuer that has a registration statement under the Securities Act of 1933 covering an initial public offering of securities to be listed by the issuer, where in each case the listed issuer was not, immediately prior to the effective date of such registration statement, required to file reports with the Commission pursuant to section 13(a) or 15(d) of the Act;*

*(1) [Reserved]; and*

*(2) A minority of the members of the listed issuer's audit committee may be exempt from the independence requirements of paragraph (b)(1)(ii) of this section for one year from the date of effectiveness of such registration statement.*

*(B) An audit committee member that sits on the board of directors of a listed issuer and an affiliate of the listed issuer is exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if the member, except for being a director on each such board of directors, otherwise meets the independence requirements of paragraph (b)(1)(ii) of this section for each such entity, including the receipt of only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of each such entity.*

*(C) An employee of a foreign private issuer who is not an executive officer of the foreign private issuer is exempt from the requirements of paragraph (b)(1)(ii) of this section if the employee is elected or named to the board of directors or audit committee of the foreign private issuer pursuant to the issuer's governing law or documents, an employee collective bargaining or similar agreement or other home country legal or listing requirements.*

*(D) An audit committee member of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:*

*(1) The member is an affiliate of the foreign private issuer or a representative of such an affiliate;*

*(2) The member has only observer status on, and is not a voting member or the chair of, the audit committee; and*

*(3) Neither the member nor the affiliate is an executive officer of the foreign private issuer.*

*(E) An audit committee member of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:*

*(1) The member is a representative or designee of a foreign government or foreign governmental entity that is an affiliate of the foreign private issuer; and*

*(2) The member is not an executive officer of the foreign private issuer.*

*(F) In addition to paragraphs (b)(1)(iv)(A) through (E) of this section, if the Commission exempts from the requirements of paragraphs (b)(1)(ii) or (b)(1)(iii) of Commission Rule 10A–3 under the Act a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances, such relationship shall also be exempt from the requirements of paragraphs (b)(1)(ii) or (b)(1)(iii) of this Rule 849.*

*(2) Responsibilities relating to registered public accounting firms. The audit committee of each listed issuer, in its capacity as a committee of the board of directors, must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer, and each such registered public accounting firm must report directly to the audit committee.*

*(3) Complaints. Each audit committee must establish procedures for:*

*(i) The receipt, retention, and treatment of complaints received by the listed issuer regarding accounting, internal accounting controls, or auditing matters; and*

*(ii) The confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters.*

*(4) Authority to engage advisers. Each audit committee must have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.*

*(5) Funding. Each listed issuer must provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of:*

*(i) Compensation to any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer;*

*(ii) Compensation to any advisers employed by the audit committee under paragraph (b)(4) of this section; and*

*(iii) Ordinary administrative expenses of the audit committee that are necessary or appropriate in carrying out its duties.*

*(c) General exemptions.*

*(1) At any time when an issuer has a class of common equity or similar securities that is listed on a national securities exchange or national securities association subject to the requirements of listing standards which comply with the requirements of Commission Rule 10A–3 under the Act, the listing of other classes of securities on the Exchange is not subject to the requirements of this section.*

*(2) At any time when an issuer has a class of common equity securities (or similar securities) that is listed on a national securities exchange or national securities association subject to the requirements of listing standards which comply with the requirements of Commission Rule 10A–3 under the Act, the listing on the Exchange of classes of securities of a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of the issuer (except classes of equity securities, other than non-convertible, non-participating preferred securities, of such subsidiary) is not subject to the requirements of this section.*

*(3) The listing of securities of a foreign private issuer is not subject to the requirements of paragraphs (b)(1) through (b)(5) of this section if the foreign private issuer meets the following requirements:*

*(i) The foreign private issuer has a board of auditors (or similar body), or has statutory auditors, established and selected pursuant to home country legal or listing provisions expressly requiring or permitting such a board or similar body;*

*(ii) The board or body, or statutory auditors is required under home country legal or listing requirements to be either:*

*(A) Separate from the board of directors; or*

*(B) Composed of one or more members of the board of directors and*

*one or more members that are not also members of the board of directors;*

*(iii) The board or body, or statutory auditors, are not elected by management of such issuer and no executive officer of the foreign private issuer is a member of such board or body, or statutory auditors;*

*(iv) Home country legal or listing provisions set forth or provide for standards for the independence of such board or body, or statutory auditors, from the foreign private issuer or the management of such issuer;*

*(v) Such board or body, or statutory auditors, in accordance with any applicable home country legal or listing requirements or the issuer's governing documents, are responsible, to the extent permitted by law, for the appointment, retention and oversight of the work of any registered public accounting firm engaged (including, to the extent permitted by law, the resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer; and*

*(vi) The audit committee requirements of paragraphs (b)(3), (b)(4) and (b)(5) of this section apply to such board or body, or statutory auditors, to the extent permitted by law.*

*(4) The listing of a security futures product cleared by a clearing agency that is registered pursuant to Section 17A of the Act or that is exempt from the registration requirements of Section 17A pursuant to paragraph (b)(7)(A) of such section is not subject to the requirements of this section.*

*(5) The listing of a standardized option, as defined in Commission Rule 9b–1(a)(4) under the Act, issued by a clearing agency that is registered pursuant to Section 17A of the Act is not subject to the requirements of this section.*

*(6) The listing of securities of the following listed issuers are not subject to the requirements of this section:*

*(i) Asset-Backed Issuers (as defined in Commission Rules 13a–14(g) and 15d–14(g) under the Act);*

*(ii) Unit investment trusts (as defined in 15 U.S.C. 80a–4(2)); and*

*(iii) Foreign governments (as defined in Commission Rule 3b–4(a) under the Act).*

*(7) The listing of securities of a listed issuer is not subject to the requirements of this section if:*

*(i) The listed issuer, as reflected in the applicable listing application, is organized as a trust or other unincorporated association that does not have a board of directors or persons acting in a similar capacity; and*

*(ii) The activities of the listed issuer that is described in paragraph (c)(7)(i) of this section are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.*

*(d) [Reserved]*

*(e) Definitions. Unless the context otherwise requires, all terms used in this section have the same meaning as in the Act. In addition, unless the context otherwise requires, the following definitions apply for purposes of this section:*

(1)(i) The term affiliate of, or a person affiliated with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(ii)(A) A person will be deemed not to be in control of a specified person for purposes of this section if the person:

*(1) Is not the beneficial owner, directly or indirectly, of more than 10% of any class of voting equity securities of the specified person; and*

*(2) Is not an executive officer of the specified person.*

*(B) Paragraph (e)(1)(ii)(A) of this section only creates a safe harbor position that a person does not control a specified person. The existence of the safe harbor does not create a presumption in any way that a person exceeding the ownership requirement in paragraph (e)(1)(ii)(A)(1) of this section controls or is otherwise an affiliate of a specified person.*

*(iii) The following will be deemed to be affiliates:*

*(A) An executive officer of an affiliate;*

*(B) A director who also is an employee of an affiliate;*

*(C) A general partner of an affiliate; and*

*(D) A managing member of an affiliate.*

*(iv) For purposes of paragraph (e)(1)(i) of this section, dual holding companies will not be deemed to be affiliates of or persons affiliated with each other by virtue of their dual holding company arrangements with each other, including where directors of one dual holding company are also directors of the other dual holding company, or where directors of one or both dual holding companies are also directors of the businesses jointly controlled, directly or indirectly, by the dual holding companies (and, in each case, receive only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of the dual holding companies or any entity that is jointly controlled, directly or indirectly, by the dual holding companies).*

*(2) In the case of foreign private issuers with a two-tier board system, the term board of directors means the supervisory or non-management board.*

*(3) In the case of a listed issuer that is a limited partnership or limited liability company where such entity does not have a board of directors or equivalent body, the term board of directors means the board of directors of the managing general partner, managing member or equivalent body.*

*(4) The term control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.*

*(5) The term dual holding companies means two foreign private issuers that:*

*(i) Are organized in different national jurisdictions;*

*(ii) Collectively own and supervise the management of one or more businesses which are conducted as a single economic enterprise; and*

*(iii) Do not conduct any business other than collectively owning and supervising such businesses and activities reasonably incidental thereto.*

*(6) The term executive officer has the meaning set forth in Commission Rule 3b–7.*

*(7) The term foreign private issuer has the meaning set forth in Commission Rule 3b–4(c).*

*(8) The term indirect acceptance by a member of an audit committee of any consulting, advisory or other compensatory fee includes acceptance of such a fee by a spouse, a minor child or stepchild or a child or stepchild sharing a home with the member or by an entity in which such member is a partner, member, an officer such as a managing director occupying a comparable position or executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the issuer or any subsidiary of the issuer.*

*(9) The terms listed and listing refer to securities listed on a national securities exchange or listed in an automated inter-dealer quotation*

*system of a national securities association or to issuers of such securities.*

*(f) Opportunity to cure defects. A listed issuer shall have the opportunity provided for in Rule 811 to cure any defects that would be the basis for delisting under paragraph (a) of this section, before the imposition of such delisting. Additionally, if a member of an audit committee ceases to be independent in accordance with the requirements of this section for reasons outside the member's reasonable control, that person, with notice by the issuer to the Exchange, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.*

*(g) Notification of noncompliance. Listed issuers must notify the Exchange promptly after an executive officer of the listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of this section.*

*(h) Audit Committee Charter. The board of directors must adopt and approve a formal written charter for the audit committee. The audit committee must review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify the following:*

*(i) The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements;*

*(ii) That the outside auditor is ultimately accountable to the board of directors and the audit committee of the company, that the audit committee and board of directors have the ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement), and that the audit committee is vested with all responsibilities and authority required by Rule 10A–3 under the Securities Exchange Act of 1934; and*

*(iii) That the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the board of directors take appropriate action in response to the outside auditors' report to satisfy itself of the outside auditors' independence.*

*(i) Expertise Requirement of Audit Committee Members.*

*(i) Each member of the audit committee must be financially literate, as such qualification is interpreted by the company's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee; and*

*(ii) At least one member of the audit committee must have accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment.*

*(j) Written Affirmation. As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provide the Exchange written confirmation regarding:*

*(i) any determination that the company's board of directors has made regarding the independence of directors pursuant to any of the subparagraphs above;*

*(ii) the financial literacy of the audit committee member;*

*(iii) the determination that at least one of the audit committee members has accounting or related financial management expertise; and*

*(iv) the annual review and reassessment of the adequacy of the audit committee charter.*

*(k) Related Party Transactions. Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and all such transactions must be approved by the company's audit committee or another independent body of the board of directors. For purposes of this rule, the term ''related party transaction'' shall refer to transactions required to be disclosed pursuant to SEC Regulation S–K, Item 404.*

Commentary:

*1. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with, and do not affect the application of, any requirement or ability under a listed issuer's governing law or documents or other home country legal or listing provisions that requires or permits shareholders to ultimately vote on, approve or ratify such requirements. The requirements instead relate to the assignment of responsibility as between the audit committee and management. In such an instance, however, if the listed issuer provides a recommendation or nomination regarding such responsibilities to shareholders, the audit committee of the listed issuer, or body performing similar functions, must be responsible for making the recommendation or nomination.*

*2. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v), (c)(3)(vi) and Commentary 1 of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that prohibits the full board of directors from delegating such responsibilities to the listed issuer's audit committee or limits the degree of such delegation. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law, including submitting nominations or recommendations to the full board.*

*3. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that vests such responsibilities with a government entity or tribunal. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law.*

*4. For purposes of this section, the determination of a person's beneficial ownership must be made in accordance with Rule 13d–3 under the Act.*

Rule 811. Delisting Policies and Procedures

Rule 811. *Once Exchange staff identifies a company as being below the Exchange's continued listing criteria (and not able to otherwise qualify under an initial listing standard), Exchange staff will so notify the company by letter. This letter will also provide the company with an opportunity to provide the Exchange staff with a plan (the ''Plan'') advising the Exchange of action the company has taken, or will take, that would bring it into compliance with the continued listing standards within three months of receipt of the letter. The company has 30 days from the receipt of the letter to submit its Plan to the Exchange for review; if it does not submit a Plan within this period the Exchange will promptly initiate delisting proceedings as provided in subsections (a)–(g) below. The Exchange's Allocation, Evaluation and Securities Committee (the ''Committee'')*

*will evaluate the Plan and determine whether the company has made reasonable demonstration in the Plan of an ability to regain compliance with the continued listing standards within the three month period. The Committee will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing. If the Committee does not accept the Plan, the Exchange will promptly initiate delisting proceedings as provided in subsections (a)–(g) below. If Exchange staff accepts the Plan, the three month Plan period will commence on the date the issuer is notified of such acceptance. The Exchange will then review the company on a periodic basis for compliance with the Plan. If the company does not show progress consistent with the Plan, the Committee will review the circumstances and variance, and determine whether such variance warrants the commencement of delisting procedures. Should the Committee determine to proceed with delisting procedures, it may do so regardless of the company's continued listing status at that time. If, prior to the end of the three month Plan period, the company is able to demonstrate compliance with the continued listing standards at the end of the three month Plan period, the Exchange will deem the Plan period over. If the company does not meet continued listing standards at the end of the three month Plan period, the Exchange will promptly initiate delisting procedures. If the company, within twelve months of the end of the Plan (including any early termination of the Plan period) is again determined to be below continued listing standards, the Committee will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of recovery from the first incident. It will then take appropriate action which, depending upon the circumstances, may include truncating the procedures described above or immediately initiating delisting procedures.*

Whenever the Exchange determines that it is appropriate to consider removing a security from listing [(or from unlisted trading)] for other than routine reasons (redemptions or maturities) it will follow the following procedures:

(a)–(g) No change.

**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 amend Phlx Rule 849 to provide enhanced listing standards related to Phlx-listed issuers' audit committees, and to amend Phlx Rule 811 to incorporate a procedure to provide issuers a ''cure period'' prior to being delisted for failure to meet Exchange listing standards. The changes are summarized below.

*Rule 849, Audit Committee/Conflicts of Interest.*

*Independence—Background.* Currently, Phlx Rule 849 requires listed companies to maintain audit committees, a majority of the members of which are ''independent directors'' as defined in Phlx Rule 851. Phlx Rule 851 requires listed issuers to maintain a minimum of two independent directors on its board and defines ''independent director'' as a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. This current requirement would remain in effect pending the implementation of the higher standards proposed in Phlx Rules 849(b)–(j). Proposed Phlx Rule 849(b) would require a listed issuer to have, and to certify that it has and will continue to have, an audit committee, as defined in Section 3(a)(58) of the Act, of at least three members, each of whom meet certain criteria set forth in proposed Phlx Rule 849(b).

*Independence—Blue Ribbon Committee Recommendations.* Proposed Phlx Rule 849(b)(1)(i) would require each member of the audit committee to be a member of the board of directors of the listed issuer and to be otherwise independent.[6] Proposed Rules 849(b)(1)(i)(A) through (D) are based in large part upon Rule 5.3(b)(3)(i)–(iv) of PCX Equities, Inc.,[7] and would preclude employees and those with business relationships from serving on a listed company's audit committee. They would also prohibit audit committee service by a director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee. Further, a director who is an ''Immediate Family'' member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship.

*Independence—Rule 10A–3 Requirements.* Proposed Phlx Rules 849(b)(1)(ii) and (iii) prescribe certain independence requirements for audit committee members of non-investment company issuers and for investment company issuers, respectively, which are mandated by Commission Rule 10A–3(b)(1)(ii) and (iii). Proposed Phlx Rules 849(b)(1)(iv)(A) through (F) provide a number of exemptions from the Phlx Rule 849(b)(1) independence requirements as permitted by Commission Rule 10A–3(b)(1)(iv).[8]

*Responsibilities Relating to Registered Public Accounting Firms, Complaints, Authority to Engage Advisers and Funding.* Phlx Rules 849(b)(2)–(5) provide for the audit committee's responsibility to select and oversee the issuer's independent accountant, procedures for handling complaints regarding the issuer's accounting practices, the authority of the audit committee to engage advisors, and funding for the independent auditor and any outside advisors engaged by the

[6] However, where a listed issuer is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each member of the audit committee is a member of the board of directors of at least one of such dual holding companies.

[7] PCX Equities, Inc. Rules 5.3(b)(3)(i)–(iv) were approved by the Commission on February 7, 2001. *See* Securities Exchange Act Release No. 43941 (February 7, 2001), 66 FR 10545 (February 15, 2001) (approving SR–PCX–00–40). The rules had been proposed to conform to recommendations made in 1999 by the Blue Ribbon Committee on Improving Effectiveness of Corporate Audit Committees (the ''Blue Ribbon Committee'') and rule changes adopted by other self-regulatory organizations. The Blue Ribbon Committee's recommendations were intended to strengthen the independence of the audit committee, make the audit committee more effective, and address mechanisms for accountability among the audit committee, the outside auditors, and management.

[8] The Commission notes that Phlx did not include the exception provided for in Commission Rule 10A–3(b)(1)(iv)(A)(*1*).

audit committee. As noted above, these standards are required by Commission Rule 10A–3(b)(2)–(5).

*General Exemptions.* Phlx Rule 849(c)(1)–(7) provides a number of exemptions from Phlx Rule 849, which are provided for in Commission Rule 10A–3(c).

*Definitions.* Phlx Rule 849(e) defines a number of terms used in Phlx Rule 849, including the terms ''affiliate'' and ''control,'' and also including the term ''board of directors'' in the case of foreign private issuers with a two-tier board system or a limited partnership or limited liability company where such entity does not have a board of directors or equivalent body.

*Opportunity to Cure Defects.* Phlx Rule 849(f) provides that a listed issuer shall have the opportunity provided for in Phlx Rule 811 (see below) to cure any defects that would be the basis for delisting under Phlx Rule 849(a) before the imposition of such delisting. It also provides that if a member of an audit committee ceases to be independent in accordance with the requirements of Phlx Rule 849 for reasons outside the member's reasonable control, that person, with notice by the issuer to the Exchange, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the member to be no longer independent.

*Notification of Noncompliance.* Proposed Phlx Rule 849(g) requires listed issuers to notify the Exchange promptly after an executive officer of the listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of Phlx Rule 849.

*Audit Committee Charter.* Proposed Phlx Rule 849(h) requires the board of directors to adopt and approve a formal written charter for the audit committee, and requires the audit committee to review and reassess the adequacy of the formal written charter on an annual basis. The proposed rule details the required content of the charter.

*Expertise Requirement of Audit Committee Members.* Proposed Phlx Rule 849(i) requires each member of the audit committee to be financially literate or become financially literate within a reasonable period of time after his or her appointment to the audit committee. It requires at least one member of the audit committee to have accounting or related financial management expertise.

*Written Affirmation.* Proposed Phlx Rule 849(j) provides that as part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each listed company should provide the Exchange written confirmation regarding determinations of directors' independence, the financial literacy of audit committee members, the determination that at least one of the audit committee members has accounting or related financial management expertise, and the annual review and reassessment of the adequacy of the audit committee charter.

*Related Party Transactions.* Proposed Phlx Rule 849(k) replaces the second sentence of current Phlx Rule 849. It defines ''related party transactions'' and requires issuers to conduct an appropriate review of all such transactions on an ongoing basis. It also requires all such transactions to be approved by the audit committee or another independent body of the board of directors.

*Commentary.* Commentary sections 1–4 replicate the Instructions adopted by the Commission as part of Rule 10A–3, and are designed to clarify the applicability of certain other Rule 849 provisions.

*Rule 811, Delisting Policies and Procedures.*

Rule 811, Delisting Policies and Procedures, is proposed to be amended by the addition of introductory text prior to subsection (a). The new language would provide a process pursuant to which a company identified by Exchange staff as being below the Exchange's continued listing criteria would be provided an opportunity to provide Exchange staff with a plan advising the Exchange of action the company has taken, or will take, that would bring it into compliance with the continued listing standards within three months (the ''Plan''). The company would have 30 days from receipt of a letter from the Exchange notifying the company of the deficiency to submit the plan. The Exchange's Allocation, Evaluation and Securities Committee, within 45 days of receipt of the proposed plan, will determine whether the company has made a reasonable demonstration of an ability to regain compliance with the continued listing standards within the three month period. If Exchange staff accepts the Plan, the three-month Plan period will commence on the date the issuer is notified of such acceptance. If the company does not show progress consistent with the Plan, it may proceed with delisting. If the company does not meet continued listing standards at the end of the three month Plan period, the Exchange will promptly initiate delisting procedures.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, Amex believes the proposed rule change is designed to increase investor protection by promoting accountability, transparency and integrity by listed companies.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–51 and should be submitted by November 6, 2003.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–26101 Filed 10–15–03; 8:45 am]

**BILLING CODE 8010–01–P**

## SOCIAL SECURITY ADMINISTRATION

### The Ticket to Work and Work Incentives Advisory Panel Meeting

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of meeting.

**DATES:** November 5, 2003, 9:30 a.m.–4:45 p.m.*, November 6, 2003, 9 a.m.–5 p.m., November 7, 2003, 9 a.m.–1 p.m.

*The full Panel deliberative meeting will end at 4:45 p.m. The standing committees of the Panel will meet from 5 p.m. to 6:30 p.m.

**ADDRESSES:** Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, Phone: (703) 418–1234.

**SUPPLEMENTARY INFORMATION:** *Type of meeting:* This is a quarterly meeting open to the public. The public is invited to participate by coming to the address listed above. Public comment will be taken during the quarterly meeting. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

*Purpose:* In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress and the Commissioner of SSA, on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings, hear presentations, conduct full Panel deliberations on the implementation of TWWIIA and receive public testimony. The topics for the meeting will include presentations of briefing papers prepared for the Panel, discussion of topics for the next Annual Report, and agency updates from SSA, the Department of Education and the Department of Health and Human Services.

The Panel will meet in person commencing on Wednesday, November 5, 2003 from 9:30 a.m. to 4:45 p.m.; Thursday, November 6, 2003 from 9 a.m. to 5 p.m.; and Friday, November 7, 2003 from 9 a.m. to 1 p.m.

*Agenda:* The Panel will hold a quarterly meeting. Briefings, presentations, full Panel deliberations and other Panel business will be held on Wednesday, Thursday and Friday, November 5, 6, and 7, 2003. Public testimony will be heard in person on Wednesday, November 5, 2003 from 2:30 p.m. to 3 p.m. and on Friday, November 7, 2003 from 9:05 a.m. to 9:35 a.m. Members of the public must schedule a timeslot in order to comment. In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time to deliberate and conduct other Panel business.

Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA implementation, no longer than 5 pages, may be submitted in person or by mail, fax or email on an on-going basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Kristen M. Breland, at *kristen.m.breland@ssa.gov* or calling (202) 358–6423.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the meeting or can be received in advance electronically or by fax upon request.

*Contact Information:* Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC, 20024.
- Telephone contact with Kristen Breland at (202) 358–6423.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: October 9, 2003.

**Carol Brenner,**

*Designated Federal Officer.*

[FR Doc. 03–26140 Filed 10–15–03; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice 4513]**

### Culturally Significant Objects Imported for Exhibition; Determinations: ''Verrocchio's David Restored: A Renaissance Bronze From the National Museum of Bargello, Florence''

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the object to be included in the exhibition ''Verrocchio's David Restored: A Renaissance Bronze from the National Museum of Bargello, Florence,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is

[11] 17 CFR 200.30–3(a)(12).