

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415, (202) 606-1500.

Dated: May 24, 1999.

John F. Leyden,

Chairman, Federal Prevailing Rate Advisory Committee.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41441; File No. SR-NYSE-98-47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt Rule 440 I Requiring Records of Compensation Arrangements Concerning Floor Brokerage

May 24, 1999.

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 December 23, 1998, the New York Stock Exchange, Inc. ("NYSE" 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 Exchange. Amendment No. 1 was filed with the Commission on May 14, 1999.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The NYSE is filing a proposed rule change to adopt new Rule 440 I, *Records of Compensation Arrangements—Floor Brokerage*. Below is the text of the proposed rule change. Additions are italicized.

Rule 440 I Records of Compensation Arrangements—Floor Brokerage

(a) Every member not associated with a member organization and each member organization primarily engaged as an agent in executing transactions on the Floor of the Exchange must maintain a written record including a description of each type of compensation arrangement entered into with other members, member organizations, non-member organizations and customers in connection with transactions executed on the Floor of the Exchange.

(b) Records maintained in accordance with paragraph (a) of this Rule must identify, by name, the members, member organizations, non-member organizations and customers who are parties to each type of compensation arrangement in effect.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter to Richard C. Strasser, Assistant Director, Division of Market Regulation, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE dated May 12, 1999.

••• Supplementary Material

.10 For purposes of paragraphs (a) and (b) of this Rule 440 I, the requirement to maintain a written record of each type of compensation arrangement shall not apply to:

(a) any compensation arrangement wherein a member or member organization receives gross compensation of less than \$10,000 per year from any member, member organization, non-member organization or customer; or

(b) any compensation arrangement involving the transmission of orders solely through the Exchange's electronic order routing system.

.20 A member or member organization is deemed to be primarily engaged as an agent in executing transactions on the Floor of the Exchange if at least 75% of its revenue is derived from floor brokerage.

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 Exchange 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 Exchange 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

New Rule 440 I will require that every member not associated with a member organization, and each member organization primarily engaged as an agent in executing transactions on the Floor of the Exchange, maintain a written record of each type of compensation arrangement that they enter into with other members, member organizations, non-member organizations, or customers relating to transactions on the Floor. The written record must include a description of each type of arrangement and identify, by name, the parties to each type of arrangement in effect.

In addition, proposed Rule 440 I, Supplementary Material .10 excludes the following compensation arrangements from the requirements to maintain a written record:

(1) arrangements involving gross compensation of less than \$10,000 per year; and

(2) arrangements involving orders transmitted solely through the Exchange's electronic order routing system (e.g. SuperDot).

Rule 440 I, Supplementary Material .20 provides that a member or member organization is deemed to be primarily engaged as an agent in executing transactions on the Floor of the Exchange if at least 75% of its revenue is derived from floor brokerage.

Rule 440 I will enhance the Exchange's oversight of floor brokerage compensation arrangements in connection with Exchange members' and member organizations' compliance with Section 11(a) of the Act⁴ and Rule 11a-1⁵ thereunder which, among other things, prohibit a member or member organization from executing on the Exchange an order for that member's or member organization's "own account" or any account in which the member or member organization has an interest, unless the member or member organization acts in reliance on one of the exceptions provided in Section 11(a).⁶

The new rule will apply to members and member organizations primarily engaged as agents in executing transactions on the Floor of the Exchange (e.g., so called "\$2 brokers" or "independent brokers"). The Exchange has determined to exclude from the scope of proposed new Rule 440 I "upstairs" (i.e., off the Floor) members and member organizations because the Exchange believes that the requirements would be unduly burdensome on and impractical for those members and member organizations, based on the diverse nature and size of their business activities and customer base. Because of their size, the Exchange believes that these upstairs organizations generally have independent supervisory structures and internal control procedures of the supervision and review of the organization's diverse business activities, including the monitoring and review of compensation arrangements. Accordingly, the Exchange believes that the existing regulatory scheme is adequate, and that the application of the requirements of the new rule to upstairs organizations would be duplicative and unnecessary.

In contrast, according to the NYSE, the supervisory oversight and review structure for Floor members and member organizations is very different from upstairs organizations. Many Floor members act as sole proprietors with a limited customer and product base and, therefore, do not generally have independent supervisory structures nor are they subject to the same formalized internal supervisory oversight as upstairs organizations. Absent the requirements of proposed new Rule 440 I, records of compensation arrangements may not be maintained in a formalized manner by the Floor members and member organizations. Rule 440 I will provide an audit trail by requiring the creation of records of compensation arrangements that will facilitate the implementation and maintenance of the Exchange's new examination program geared specifically to such members. Proposed Rule 440 I specifies a type of record, records of compensation arrangements, in addition to the records required to be maintained pursuant to Rules 17a-3⁷ and 17a-4 of the Act,⁸ that will be critical in providing the Exchange the ability to monitor Floor Broker activities.

Maintaining records of compensation arrangements by members and member organizations primarily engaged as agents in executing transactions on the Floor will facilitate the Exchange's review of these members' and member organizations' activities on an ongoing basis as part of the routine examination process, as well as on a for cause basis. During the course of routine reviews and examinations, the Exchange will be able to sample those compensation arrangements in place to review for compliance with section 11(a) of the Act in terms of whether any such arrangement constitutes a member or member organization having an interest in an account.

The adoption of proposed new Rule 440 I will better enable the Exchange to review and examine, as necessary, members' and member organizations' activities in connection with the Exchange's regulatory oversight responsibility to surveil for potentially violative conduct.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)⁹ that an Exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general to protect investors and the public interest. The Exchange represents that the proposed rule change is designed to accomplish these ends by strengthening the Exchange's ability to examine and surveil activities on the Exchange Floor.

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

The Exchange represents that the proposed rule change will impose no 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 solicited or received with respect to the proposed rule change.

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 self-regulatory organization consents, the Commission will:

- (A) by order approve the 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 at the Commission's Public Reference

⁴ 15 U.S.C. 78k(a).

⁵ 17 CFR 240.11a-1.

⁶ The circumstances under which a member or member organization may trade for its "own account" or any account in which the member or member organization has an interest are listed in Section 11(a)(1)(A)-(I). 15 U.S.C. 78k(a)(1)(A)-(I).

⁷ 17 CFR 204.17a-3.

⁸ 17 CFR 204.17a-4.

⁹ 15 U.S.C. 78f(b)(5).

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-NYSE-98-47 and should be submitted by June 23, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-13867 Filed 6-1-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41449; File No. SR-PHLX-99-10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Exchange Fees for Trading Floor Members Participating in the Wireless Telephone System

May 25, 1999.

Pursuant 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 April 19, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interest persons.

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

Phlx proposes to amend its schedule of dues, fees and charges to adopt user fees for all option floor members participating in Phlx's new wireless telephone system.⁴

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

In its filing with the Commission, 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. 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 this proposed rule change is to amend Phlx's fee schedule to adopt a wireless telephone system fee applicable to all option floor members participating in the Ericsson wireless telephone system offered by Phlx. All options floor members participating in the wireless telephone system would be assessed a one-time fee of \$1,000 to purchase a handset, headset, battery, charger and clip. In addition, for each handset purchased, each participant must agree to pay a monthly charge of \$200 for a period of twelve months. The twelve-month period will commence on the date of the agreement signed by the participant. At the end of the twelve-month period, a new agreement will be presented to the participant. Payment of the monthly fees will be governed by Phlx Rule 50.

Furthermore, a fee for a lost, stolen or damaged headset, handset, battery charger or clip will be assessed at the current replacement or repair cost.⁵

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with Section 6(b)⁶ of the Act in general and furthers the objectives of Section 6(b)(4)⁷ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among Phlx members using its facilities.⁸

⁵ Each Participant will be required to sign an agreement that states that a one-year warranty period does not apply (i) to damage caused by a subscriber, third parties or force of nature, and (ii) to any system repaired or altered, except by Ericsson, or subjected to misuse, negligence or accident. Batteries and accessories are not covered under the warranty.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ In reviewing the proposed rule change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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.

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

the Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change, which establishes or changes a due, fee, or other charge imposed by the Exchange, has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(2) or rule 19b-4 thereunder.¹⁰ 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. 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-PHLX-99-10 and should be submitted by June 23, 1999.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1, which proposed a Wireless Telephone System policy, was submitted on April 19, 1999. The Amendment was replaced by SR-PHLX-99-14 and subsequently withdrawn on May 18, 1999. See Letter to Michael Walinskas, Associate Director, Division of Market Regulation SEC from John Dayton Counsel Phlx, dated May 18, 1999. See also SR-PHLX-99-14 and SR-PHLX-99-15 relating to the use of wireless telephones. Securities Exchange Act Release Nos. 41450 (May 25, 1999) and 41451 (May 25, 1999).

⁴ Phlx currently intends to make this telephone system available to the equity and index options floor, not the foreign currency options floor.