

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-19738 Filed 8-3-00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43081; File No. SR-Phlx-00-53]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Permanent Approval of a Pilot Program Regarding Fees for Computer Equipment Services, Repairs or Replacements, and Relocation of Computer Equipment

July 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 22, 2000, 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 Exchange.<sup>3</sup> 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 request permanent approval of its pilot program which, requires all members on the options and equity trading floors to pay a fee for (1) computer equipment services, repairs, or replacements and (2) member-requested relocation of computer

equipment.<sup>4</sup> The current pilot program is in effect from April 1, 2000 through June 30, 2000.<sup>5</sup>

#### 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

The purpose of the proposed rule change is to request permanent approval of Phlx's current three-month pilot program that amends Phlx's fee schedule for (1) computer equipment services, repairs, or replacements and (2) member-requested relocation of computer equipment.

First, pursuant to the current pilot program, the Phlx's schedule of dues, fees, and charges was amended to impose a fee on all members on the options and equity floors for computer equipment services, repairs, or replacements on the trading floors. Specifically, the Phlx charges \$100 for every service call plus \$75 an hour,<sup>6</sup> with a minimum of two hours charged per service call.<sup>7</sup> The Exchange staff anticipates that the majority of computer services, repairs, or replacements will continue to be completed within two hours. Currently, notwithstanding the pilot program, members are not bill for computer services, repairs, or replacements when new or refurbished equipment fails in the normal and customary manner of usage within 30 days of installation. In addition, members are not charged for repairing system-wide problems,

rebooting central processing units, and adjusting cables or replacing certain extension cables.

These changes are intended to defray the cost of servicing, repairing, or replacing computer equipment on the options and equity trading floors, as well as to encourage care in using computer equipment.<sup>8</sup> The Exchange receives approximately 90 percent of calls on a routine basis to repair, replace, or otherwise service keyboards, track balls, printers, and other computer equipment from options or equity floor members' work stations.

Second, the Exchange has amended its schedule of dues, fees, and charges to impose a fee for member-requested relocation of a member's work station or any piece of their computer equipment on the options or equity trading floors. Under the current pilot program, the Exchange imposes a \$100 service fee plus \$75 per hour per person moving the equipment, with a minimum of two hours charged for each relocation request.<sup>9</sup>

The post/equipment relocation fee should assist in defraying the costs associated with the moving of computer equipment. Member/participant-requested relocations on the trading floors can be very time-consuming and costly because nearly all relocations take place after hours or on the weekends.

Exchange staff and trading floor members are required to complete a pre-printed form prior to requesting repair or relocation service. A notice describing the equipment repair procedures was sent to all floor members prior to the implementation of the original three-month pilot program that was in effect from January 1, 2000 through March 31, 2000. Another notice will be sent to members and participants to inform them that these fees will be implemented on a permanent basis to members on the equity and options trading floors.

The Exchange staff has had the opportunity to review the procedures relating to computer equipment services, repairs, replacements, and relocations, which include instructions to members and Exchange staff as to where the service request forms will be located, directions as to how to

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Phlx originally submitted the proposal on June 22, 2000. On July 19, 2000 the Phlx submitted a letter from Cynthia Hoekstra, Attorney, Phlx, to Jack Drogin, Assistant Director, Division of Market Regulation ("Division"), Commission, amending the filing ("Amendment No. 1"). In Amendment No. 1, the Phlx withdrew the portion of the filing extending the fees for computer equipment services, repairs or replacements, and member-requested relocation to the Exchange's Foreign Currency Option trading floor. Amendment No. 1 also requests that the permanent approval of the pilot program be retroactive to the date of the original filing on June 22, 2000. Because of the substantive nature of Amendment No. 1, the Commission deems the filing date to be July 19, 2000, the date Amendment No. 1 was filed.

<sup>4</sup> A fee will not be charged for new installation of computer equipment.

<sup>5</sup> See Securities Exchange Act Release No. 42654 (April 10, 2000), 65 FR 20500 (April 17, 2000).

<sup>6</sup> The computer equipment services, repairs, or replacements fee is charged per service call and per hour but not per person, unlike the computer relocation request fee. Telephone conversation between Cynthia Hoekstra, Attorney, Phlx, and Marla Chidsey, Attorney Division, Commission on July 6, 2000.

<sup>7</sup> Some component of this amount may reflect Pennsylvania sales tax.

<sup>8</sup> This proposed fee will apply to all such requests with no distinction between intentional abuse or normal wear and tear due to the difficulties associated with categorizing the types or repairs.

<sup>9</sup> For example, if two individuals take two hours to relocate a work station, the member will be charged \$100 for the service call, plus \$300 for moving the equipment (\$75 four (two people x two hours)). Again, some component of this amount may reflect Pennsylvania sales tax.

complete the form, and which department is required to forward the forms to the accounting department. The procedures also include a provision that states that members will not be billed for computer equipment services, repairs, or replacements when new or refurbished equipment fails in the normal and customary usage within 30 days of installation. The procedures described above have proven to be an effective way to administer these requests, including the billing of fees and should continue to allow for the efficient handling of computer equipment services, repairs, or replacements, and member/participant-requested relocation of computer equipment.

The Exchange has determined that the fees for computer equipment services, repairs or replacements and relocation of computer equipment that are charged are appropriate and reflect the costs for these services that are incurred by the Exchange. After reviewing the matter, it was decided that the Exchange should continue to charge a fixed rate, as opposed to different rates for different computer repairs. The minimum charge of \$250 per service call for computer equipment services, repairs, replacements, or relocations reasonably approximates the average costs for these services. However, the minimum charge may not cover all the costs involved in repairing, servicing, and relocating computer equipment. Members and participants will continue to be billed on a monthly basis for these charges.

## 2. Statutory Basis

For these reasons, the Exchange believes that its proposal to amend its schedule of dues, fees, and charges to include a fee for computer equipment services, repairs or replacements, and a fee for member/participant-requested relocation of computer equipment is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>11</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

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

The Phlx represents that it does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Acts.

### *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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> thereunder because it establishes a due, fee, or other charge. 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.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change, as amended, 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 Phlx. All submissions should refer to File No. SR-Phlx-00-53 and should be submitted by August 25, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## **DEPARTMENT OF STATE**

### **[Public Notice 3381]**

### **Culturally Significant Objects Imported for Exhibition Determinations: "The Still Lives of Evaristo Baschenis: The Music of Silence"**

**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), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "The Still Lives of Evaristo Baschenis: The Music of Silence" imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY from November 20, 2000 thru March 4, 2001 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619-6982). The address is U.S. Department of State, SA-44; 301-4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: July 25, 2000.

**Helena Kane Finn,**

*Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.*

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).