

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-110 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-110. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2004-110 and should be submitted on or before October 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4-2354 Filed 9-22-04; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50404; File No. SR-NYSE-2004-33]

**Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Amend Exchange Rule 345A ("Continuing Education for Registered Persons")**

September 16, 2004.

On June 28, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change, 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> to rescind all currently effective exemptions from required participation in the Regulatory Element programs. On August 4, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on August 17, 2004.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

NYSE Rule 345A currently provides, in part, that no member or member organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the Regulatory Element of the continuing education requirement set forth in this Rule.<sup>5</sup> The Regulatory Element component of NYSE Rule 345A requires each registered person to complete a standardized, computer-based, interactive continuing education program within 120 days of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by the Exchange. Persons who fail to complete the Regulatory Element are deemed inactive and may not perform in any capacity or be compensated in any way requiring registration.

Currently, registered persons who were continuously registered, without a

serious disciplinary action,<sup>6</sup> for more than ten years as of the Rule's effective date (*i.e.*, July 1, 1995) were initially, and continue to be, exempt from Regulatory Element requirements under NYSE Rule 345A. The "graduated" exemption, although discontinued as of July 1998,<sup>7</sup> continues to apply to registered persons who were "graduated"<sup>8</sup> prior to the discontinuation of the exemption.

However, in response to recommendations made by the Securities Industry/Regulatory Council on Continuing Education (the "Council"), the NYSE submitted a proposed rule change to rescind all currently effective exemptions from required participation in Regulatory Element programs.<sup>9</sup> The Council believes that there is great value in exposing all registered industry participants to the full benefit of Regulatory Element programs.

Proposed amendments are expected to become effective on April 4, 2005, due to changes that would have to be made to the CRD System. Should the necessary CRD System changes be delayed, the effective date would be within 30 days of the implementation of such changes. NYSE membership will be notified via an Information Memo.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act,<sup>10</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposed rule change is consistent

<sup>6</sup> For purposes of NYSE Rule 345A, a "disciplinary action" includes statutory disqualification as defined in Section 3(a)(39) of the Act; suspension or imposition of a fine of \$5,000 or more; or being subject to an order from a securities regulator to re-enter the Regulatory Element program. See Rule 345A(a)(3)(i)-(iii).

<sup>7</sup> See Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998) (SR-NYSE-97-33).

<sup>8</sup> Once the tenth anniversary program requirement was satisfied, the registered person became exempt from Regulatory Element requirements going forward (absent a serious disciplinary event).

<sup>9</sup> The Council recommended at its December 2003 meeting that SRO Rules (*e.g.*, NYSE Rule 345A) be amended to eliminate existing exemptions from the Regulatory Element and to require all "grandfathered" and "graduated" persons to fully participate in future standardized continuing education programs, according to the Rule's prescribed schedule. See proposed NYSE Rule 345A(a)(1). Note that the proposed amendments renumber existing paragraphs of the Rule; the Rule's prescribed schedule is currently found in NYSE Rule 345A(a).

<sup>10</sup> 15 U.S.C. 78f(6).

<sup>11</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>3</sup> See letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 3, 2004 ("Amendment No. 1"). In Amendment No. 1, the NYSE made technical corrections and clarifications to the filing.

<sup>4</sup> See Securities Exchange Act Release No. 50177 (August 10, 2004), 69 FR 51134 (August 17, 2004).

<sup>5</sup> See NYSE Rule 345A(a).

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

with section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should help to ensure that all registered persons are kept up-to-date on regulatory, compliance, and sales practice-related industry issues. Further, the Commission believes that the proposed rule change will reinforce the importance of compliance with just and equitable principles of trade by exposing all registered industry participants to the full benefits of the Regulatory Element programs, which include a new Regulatory Element module that focuses specifically on ethics.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NYSE-2004-33), as amended, is approved.

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

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

[FR Doc. E4-2353 Filed 9-22-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50401; File No. SR-Phlx-2004-39]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to Retroactive Application of Permit Holder Fees and Billing Policies

September 16, 2004.

On June 30, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to: (1) Apply retroactively a recent amendment to its schedule of fees and charges ("Fee Schedule") that adopted a permit fee category, designated as "Other," for permit holders who did not

fit within any other permit fee categories; (2) apply retroactively a billing policy that set the date of notification for terminating a permit as the date that permit fee billing would cease; and (3) assess retroactively only one monthly permit fee in certain limited situations where two monthly permit fees otherwise would be imposed.<sup>3</sup> The proposal would apply these Fee Schedule changes and billing policies retroactively to February 2, 2004, the date that the permit fees were first imposed. On July 12, 2004, Phlx filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on August 6, 2004.<sup>5</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>6</sup> and, in particular, the requirements of section 6(b) of the Act<sup>7</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,<sup>8</sup> which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The proposed rule change would apply recent amendments to the Exchange's Fee Schedule and billing policies retroactively to February 2, 2004, the date that permit fees were first imposed by the Exchange in connection with its recent demutualization.<sup>9</sup> The proposed rule change is intended to remedy the fact that a few permit holders did not fit into any of the permit fee categories initially established by the Exchange

and thus were not subject to permit fees as of February 2, 2004. Thus, the proposed rule change is intended to apply the Exchange's permit fees and permit fee billing practices in an even-handed manner to all Exchange member organizations since the introduction of the permit fees on February 2, 2004.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-Phlx-2004-39), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

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

[FR Doc. E4-2350 Filed 9-22-04; 8:45 am]

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## DEPARTMENT OF STATE

[Public Notice 4836]

### Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: International Education Training Program

*Announcement Type:* Cooperative Agreement.

*Funding Opportunity Number:* ECA/A/S/A-05-12.

*Catalog of Federal Domestic Assistance Number:* 00.000.

*Dates:* None.

*Application Deadline:* November 12, 2004.

*Executive Summary:* Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3), including consortia, may submit proposals to train international education professionals from accredited U.S. colleges and universities throughout the United States to work effectively with international students, scholars, international exchange programs, and U.S. study abroad programs and to enhance community involvement with participants in these programs. Funded activities must be open to staff from any accredited U.S. institution of higher education.

### I. Funding Opportunity Description

*Authority:* Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the

<sup>3</sup> Phlx previously adopted these changes to its Fee Schedule and billing policies in a rule change that was effective on May 3, 2004, the date it was filed with the Commission. See Securities Exchange Act Release No. 49856 (June 15, 2004), 69 FR 3441 (June 21, 2004) (SR-Phlx-2004-32).

<sup>4</sup> See letter from Murray L. Ross, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated July 9, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange removed references in the Fee Schedule to the proposed date that the retroactive fees would take effect.

<sup>5</sup> See Securities Exchange Act Release No. 50129 (July 30, 2004), 69 FR 47970.

<sup>6</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See Securities Exchange Act Release No. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (Order approving the demutualization of Phlx).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

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

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

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

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).