

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-13866 Filed 6-1-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41451; File No. SR-PHLX-99-15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Use of Wireless and Radio Frequency Communications and the Prevention of Related Interference

May 25, 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 May 11, 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 interested persons.

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

Phlx proposes to adopt a policy and rule regarding the use of wireless and radio frequency ("RF") communications and the prevention of related interference at Phlx. Specifically, proposed Rule 606(b)(2) would state that no member, member organization or person associated with a member organization shall (i) establish or maintain any telephonic, electronic or wireless transmitting system or device, including related antennas, on the Options Floor or (ii) operate any other equipment on the Options Floor that creates RF or other interference with the systems of the Exchange or other

members.⁴ Proposed rule 606(c) would state that the Exchange may remove any telephonic, electronic or wireless equipment that violates Rule 606(b)(2) from any Exchange facility.

Below is the text of the proposed rule change. Proposed additions are in italics and deletions are in brackets.

Rule 606. [Connection with Non-members] *Communications and Equipment*

(a) No member or member organization shall establish or maintain any private wire connection, private radio, television or wireless system, between the Exchange Trading Floor and a nonmember without application to and approval by the Committee.

Every such means of communication shall be registered with the Committee. Notice of the discontinuance of any such means of communication shall be promptly given to the Committee.

(b)

* * * * *

(2) *No member, member organization or person associated with a member organization shall:*

(i) *establish or maintain any telephonic, electronic or wireless transmitting system or device, including related antennas, on the Options Floor or*

(ii) *operate any other equipment on the Options Floor that creates radio frequency (RF) or other interference with the systems of the Exchange or other members.*

(c) *The Exchange may remove any telephonic, electronic or wireless equipment that violates subsection (b)(2) from any Exchange facility.*

Supplementary Material:

.01 Specialists on the Exchange's equity floor shall permit each NASDAQ System market maker telephone access to the specialist post in any NASDAQ/NMS Security for which the latter is the assigned specialist.

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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 the proposed rule change is to adopt a policy and a rule concerning wireless and RF interference emanating from member systems on the (index/equity) Options Floor. The Financial Automation Department ("FA") of the Exchange has determined that certain member's wireless and RF equipment operating on the Options Floor is causing interference with other member and Exchange systems. The uncoordinated use of RF and other wireless equipment on the trading floor creates an unmanageable environment for both the Exchange and the members.

The proposed policy and rule will prohibit any member, member organization or person from establishing, maintaining or operating any telephonic, electronic or wireless transmitting system or device, including related antennas on the Option Floor that create RF or other interference with the systems of the Exchange or other members. In addition to the normal disciplinary proceedings that accompany violation of an Exchange rule, the proposed rule will allow the Exchange to remove any telephonic, electronic or wireless equipment that causes such interference. The proposed policy will be included in a memorandum that will be distributed to all Option Floor members.

FA has employed a wireless industry consultant to investigate the current situation and environment on the entire trading floor. Following this effort, FA intends to issue a comprehensive plan which will manage the finite RF and wireless availability on the trading floor. However, at this time, FA is concerned about potential, existing interference. This proposed policy and rule will address this issue by explicitly prohibiting equipment that creates interference and allow the Exchange to immediately act to curtail it.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with Section 6⁵ of the Act in general and furthers the objectives of Section 6(b)(5)⁶ in particular, because it removes

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposal was initially submitted on May 7, 1999. Amendment No. 1, correcting the numbering of proposed subparagraph "(c)" to "(9d)," was filed with the Commission on May 11, 1999. See Letter from John Dayton, Counsel, Phlx, to Michael A. Walinskas, Associate Director, Division of Market Regulation, SEC (May 11, 1999).

⁴ The Phlx also has filed a proposed rule change to adopt Rule 606(b)(1) and Supplementary Material .02 and add language to Rule 606(c) respecting wireless telephone access. See Securities Exchange Act Release No. 41450 (May 25, 1999) (SR-PHLX-99-14).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

impediments to and perfects the mechanism of a free and open market and protects investors and the public interest by prohibiting wireless and RF interference and allowing the Exchange to manage wireless and RF transmissions on the floor of the Exchange.

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder⁸ because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest; and (4) Phlx provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date. 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 the furtherance of the purposes of the Act.

The Exchange has requested that the rule change be accelerated to become operative immediately, in order to address existing interference issues. According to the Exchange, the uncoordinated use of RF communications and other wireless equipment on the trading floor creates an unmanageable environment for both the Exchange and the members. Because the proposed policy helps to remove these impediments to and perfect the

mechanism of a free and open market by making more efficient the process by which members receive and execute orders on the floor of the Exchange,⁹ the Commission finds that accelerating the operative date of the rule change is consistent with the protection of investors and the public interest, and thus designates May 25, 1999, the date of this notice, as the operative date of this filing.

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-99-15 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. 99-13928 Filed 6-1-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41450; File No. SR-PHLX-99-14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adopting a Wireless Communications Policy Relating to the Use of the Wireless Telephone System on the Options Floor

May 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² notice is hereby given that on May 11, 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. 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

Phlx proposes to adopt a policy and rule regarding the use of telephonic communications devices at Phlx. Specifically, proposed Rule 606(b)(1) will state that no member, member organization or person associated with a member organization shall establish or maintain any telephonic communication between the (index/equity) Options Floor and any other location, or between locations on the Options Floor, without the prior written approval of the Options Committee.³ Rule 606, Supplementary Material .02, will state that the Exchange has established a Wireless Telephone System policy.⁴ Violations of the Wireless Telephone System policy may result in disciplinary action by the Exchange.

Below is the text of the proposed rule change. Proposed additions are in *italics*, and deletions are in *brackets*.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange also has filed a proposed rule change to adopt Rule 606(b)(2) and (d) respecting wireless and radio frequency interference on the Options Floor. See Securities Exchange Act Release No. 41451 (May 25, 1999) (SR-PHLX-99-15).

⁴ The Wireless Telephone System policy comprises proposed Rule 606b(1), (c), and Supplementary Materials .02. Telephone conversation between John Dayton, Counsel, Phlx, and Kathy England, Assistant Director, Division of Market Regulation, SEC (May 18, 1999).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ C.f., Securities Exchange Act Release No. 40019 (May 21, 1998), 63 FR 29272 (May 28, 1998) (allowing the American Stock Exchange, LLC, to immediately terminate a member's ability to send wireless communications for failure to comply with the Wireless Communications Policy).

¹⁰ 17 CFR 200.30-3(a)(12).