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By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51477; File No. SR-NYSE-2005-11]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Annual Membership Fees Payable by Electronic Access Members of the Exchange

April 5, 2005.

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 March 10, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared

by the NYSE. The proposed rule change has been filed by the NYSE as a proposal establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 NYSE proposes to revise its policy and price list with respect to the annual membership fees payable by electronic access members ("EAMs").

Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### EAM ANNUAL FEE POLICY

[Membership fees]

Electronic access		
1989 Current price	1990 Existing formula price	1990 Proposed price
\$77,000(*) .....	\$70,736 Calculated once per year (November) for the ensuing year; based on 70 percent of prior 12-month average (December through November including initiation fee and dues) of Physical Access Membership fees.	\$63,642 (January-March 1990) Calculated quarterly; based on 70 percent of 6-months average of Physical Access Membership fees, excluding initiation fee and dues. (First quarter 1990 fee based on April-September 1989 Physical Access fees.)

\* 1988 fee, held constant for 1989.

*The membership fee payable by an electronic access member, with respect to each year of such membership, exclusive of fines and of such other charges as may be imposed pursuant to the Constitution, shall be the sum of (i) 90 of the 6 month average of the annual rentals payable under the bona fide leases of membership entered into during each of the six calendar months prior to the most recently completed quarter,<sup>5</sup> (ii) \$1,500, and (iii) with respect to the first year of such membership only, \$5,000; provided, however, that if at any time the membership fee payable pursuant to Section 1(a) of Art. X of the Constitution is in excess of, or less than, \$1,500 per year, the amount provided in clause (ii) above shall be correspondingly increased or reduced, and if the amount of the fee charged to a new member as established by the Board pursuant to*

*Section 4 of Art. II of the Constitution is in excess of, or less than, \$5,000, the amount provided in clause (iii) above shall be correspondingly increased or reduced. Such membership fee shall be paid in full prior to admission to membership, and prior to any renewal of such member's membership.*

*Notwithstanding the foregoing, in accordance with Art. X, Section 1(c) of the Constitution, the membership fee payable by an electronic access member with respect to each year of such membership shall in no event be less than \$13,500.*

*The Board has approved, for calendar 2005, the effective elimination of the initiation fee, in a manner to be administered consistently by the Exchange, in the event an electronic access member otherwise becomes an Exchange member.*

\* \* \* \* \*

#### 2005 Price List

\* \* \* \* \*

##### Regular Members

Dues—\$1,500.00.

Transfer fees for purchased and leased seat—5 percent of purchase price or last contracted sale (Minimum \$1,000.00 Maximum \$5,000).

##### Other

Physical access—calculated monthly—Function of bona fide lease prices.

Electronic access—calculated quarterly—[70 percent of prior 6 month PAM price] *The sum of (i) 90 percent of the 6 month average of the annual rentals payable under the bona fide leases of membership entered into during each of the six calendar months prior to the most recently completed*

*the average lease of the six calendar months prior to the most recently completed quarter, so that the January average lease is based on the average lease during April-September of the prior year.*

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

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

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

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

<sup>5</sup> For example, the calculation of the EAM fee charged in the month of November is based on average lease prices during January-June. The average lease for each of these months is based on

quarter,<sup>1</sup> (ii) \$1,500,<sup>2</sup> and (iii) with respect to the first year of such membership only, \$5,000.<sup>3</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

Pursuant to Art. X, Section 1(c) of the Exchange's Constitution, the Board of Directors has authority to determine the membership fee payable by an EAM, subject to a requirement that the fee not be less than \$13,500 annually. Currently, the annual membership fee payable by EAMs is 70 percent of the average price charged to physical access members ("PAMs") during the two quarters prior to the most recently completed quarter. The PAM price for each month is calculated as the six-month average lease price for each of the prior six months. However, there are currently no PAMs, as the sole remaining PAM was converted to a lease in November 2004. As such, it is appropriate to adjust the formula for calculating EAM annual membership fees to remove references to PAM prices. In addition, the Exchange has determined that the difference between

the cost of leasing and the price of an EAM should be narrowed. Accordingly, the proposed new EAM annual fee policy would increase the annual fee from 70 percent to 90 percent of what the PAM fee would have been, subject to the requirement that the fee not be less than \$13,500 annually. In addition, the revised EAM fees will include the standard initiation fee (currently \$5,000)<sup>5</sup> in the first year of membership and the standard annual membership dues (currently \$1,500).<sup>6</sup> The initiation fee and the annual dues were originally charged to EAMs, although they had been removed when EAM fees were lowered in 1989.<sup>7</sup> The Exchange's Board has approved, for calendar 2005, the effective elimination of the initiation fee, in a manner to be administered consistently by the Exchange, in the event an EAM otherwise becomes an Exchange member. As is currently the case, EAM fees under the proposed revised policy will be calculated and fixed on a quarterly basis.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that the proposal is designed so 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.

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

The Exchange does not believe that the proposed rule change would 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

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

<sup>5</sup> Transfer fees for purchased and leased seats equal 5% of the purchase price or last contracted sale of a seat, subject to minimum and maximum fees of \$1,000 and \$5,000 respectively. As seat prices currently exceed \$1,000,000, the current initiation fee is the \$5,000 maximum. See [www.nyse.com/pdfs/2005pricelist\\_a.pdf](http://www.nyse.com/pdfs/2005pricelist_a.pdf).

<sup>6</sup> See [http://www.nyse.com/pdfs/2005pricelist\\_a.pdf](http://www.nyse.com/pdfs/2005pricelist_a.pdf).

<sup>7</sup> See Securities Exchange Act Release No. 27552 (December 19, 1989), 54 FR 53226 (December 27, 1989).

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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

The Exchange asserts that the foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2) thereunder<sup>11</sup> because it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of such 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 purpose 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. Comments may be submitted by any of the following methods:

### 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-NYSE-2005-11 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-NYSE-2005-11. 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

<sup>1</sup> For example, the calculation of the EAM fee charged in the month of November is based on average lease prices during January-June. The average lease for each of these months is based on the average lease of the six calendar months prior to the most recently completed quarter, so that the January average lease is based on the average lease during April-September of the prior year.

<sup>2</sup> If at any time the dues payable by regular members are in excess of, or less than, \$1,500 per year, this amount shall be correspondingly increased or reduced.

<sup>3</sup> If at any time the maximum transfer fees for a purchased or leased seat payable by a new regular member are in excess of, or less than, \$5,000, this amount shall be correspondingly increased or reduced. The Board has approved, for calendar 2005, the effective elimination of this initiation fee, in a manner to be administered consistently by the Exchange, in the event an electronic access member otherwise becomes an Exchange member.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2005-11 and should be submitted on or before May 3, 2005.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51476; File No. SR-Phlx-2004-75]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Floor Official Conflicts of Interest

April 5, 2005.

On November 9, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("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 amend Exchange Rule 124, Disputes; and Option Floor Procedure Advices-27, Floor Official Rulings—Options ("OFPA F-27"), to authorize Exchange staff<sup>3</sup> to disqualify a Floor Official from participating in a particular ruling where it appears that such Floor Official has a conflict of interest. The proposed rule change was published for comment in the **Federal Register** on March 4, 2005.<sup>4</sup> The Commission received no comments on the proposal.

The proposed rule defines a "conflict of interest" to exist where a Floor Official is directly or indirectly

affiliated with a party seeking a Floor Official ruling; is a participant or is directly or indirectly affiliated with a participant in a transaction that is the subject of a Floor Official ruling; is a debtor or creditor of a party seeking a Floor Official ruling; or is an immediate family member of a party seeking a Floor Official ruling. The proposal does not propose to limit the term "conflict of interest" to these four circumstances and Exchange staff are authorized to consider other circumstances, on a case-by-case basis, in determining the eligibility of a particular Floor Official to participate in a particular ruling.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, by providing expressly in the Exchange's rules that Exchange staff are authorized to disqualify a Floor Official from participating in a particular ruling where it appears that such Floor Official has a conflict of interest. In the Commission's view, the proposed rule change would further the goal of fair and objective decision making by Floor Officials, because the Exchange would be able to take the steps necessary to prevent a Floor Official from participating in a particular ruling where it appears that the Floor Official has a conflict of interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-Phlx-2004-75), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

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

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<sup>5</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>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

## DEPARTMENT OF STATE

[Public Notice 5043]

### 60-Day Notice of Proposed Information Collections

**ACTION:** Notice of request for public comments.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collections described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Statement of Registration
- *OMB Control Number:* 1405-0002
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Number:* DS-2032
- *Respondents:* Business and non-profit organizations
- *Estimated Number of Respondents:* 5,000 (total)
- *Estimated Number of Responses:* 3,500 (per year)
- *Average Hours Per Response:* 2 hours
- *Total Estimated Burden:* 7,000 hours (per year)
- *Frequency:* Every one or two years
- *Obligation to Respond:* Mandatory
- *Title of Information Collection:* Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data
- *OMB Control Number:* 1405-0003
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Number:* DSP-5
- *Respondents:* Business and non-profit organizations
- *Estimated Number of Respondents:* 5,000 (total)
- *Estimated Number of Responses:* 35,000 (per year)
- *Average Hours Per Response:* 1 hour
- *Total Estimated Burden:* 35,000 hours (per year)
- *Frequency:* On occasion
- *Obligation to Respond:* Required to Obtain Benefits
- *Title of Information Collection:* Application/License for Temporary Import of Unclassified Defense Articles
- *OMB Control Number:* 1405-0013

<sup>12</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> "Exchange staff" generally refers to staff of the Exchange's Office of Market Surveillance present on the trading floor. Telephone conversation among Richard Rudolph, Director and Counsel, Phlx, Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission and Geraldine Idrizi, Attorney, Division, Commission on December 15, 2004.

<sup>4</sup> See Securities Exchange Act Release No. 51272 (February 28, 2005), 70 FR 10738.