

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51420; File No. SR-NASD-2005-003]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change To Amend Rule 4350(n) and IM-4350-7 To Conform the Time Frame for the Disclosure of a Waiver to a Company's Code of Conduct to the Time Frame Required for Similar Disclosure by the Commission's Form 8-K

March 23, 2005.

On January 12, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD Rule 4350 and related interpretive material to conform the time frame for the disclosure of a waiver to a company's code of conduct to the time frame required for similar disclosure by the Commission's Form 8-K. The proposed rule change was published for comment in the **Federal Register** on February 18, 2005.³ The Commission received no comments on the proposal.

NASD Rule 4350(n) and interpretive material IM-4350-7 require issuers listed on Nasdaq to adopt codes of conduct that are applicable to all directors, officers, and employees. Each code of conduct must require that any waiver of the code for executive officers or directors may be made only by the board of directors of the issuer and must be disclosed to shareholders, along with the reasons for the waiver. The rule specifies that issuers (other than foreign private issuers) must disclose such waivers in a Form 8-K within five business days. The proposed rule change would amend the rule and interpretive material to require such disclosure within four business days.

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 51197 (February 14, 2005), 70 FR 8414 (February 18, 2005).

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 association,⁴ and, in particular, the requirements of section 15A(b)(6) of the Act.⁵ The Commission believes that the proposed timing for disclosure of waivers is consistent with similar requirements of Commission rules concerning disclosure of waivers by issuers (other than foreign private issuers) for principal executive, financial, and accounting officers.⁶

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR-NASD-2005-003) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51419; File No. SR-Phlx-2005-11]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to an Amendment to Its By-Laws To Replace an On-Floor Equity Governor Position With an On-Floor Philadelphia Board of Trade Governor Position

March 23, 2005.

I. Introduction

On January 31, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or the

⁴ 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).

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ Item 406(a) of Regulations S-K and S-B (17 CFR 229.406(a) and 228.406(a)) requires an issuer to disclose whether the issuer has adopted a code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. Issuers are also required to disclose waivers of the code that are granted to those individuals. See Item 5.05(b) of Form 8-K (17 CFR 249.308). Recent amendments to Form 8-K shorten the time frame for this disclosure from five business days to four business days. See Securities Act Release No. 8400 (March 16, 2004), 69 FR 15594 (March 25, 2004). These amendments were effective August 23, 2004.

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

"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")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its By-laws to replace an On-Floor Equity Governor position on the Exchange's Board of Governors with an On-Floor Philadelphia Board of Trade, Inc. ("PBOT") Governor position. On March 17, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ The proposed rule change was published in the **Federal Register** on February 9, 2005.⁴ No comment letters were received on the proposal. This order approves the proposed rule change, as amended, and grants accelerated approval to Amendment No. 1.

II. Description of the Proposal

Under the proposal, Article IV, Section 4-1 of the Phlx's By-laws would be amended to change the composition of the Phlx's Board of Governors. Currently, two of the On-Floor Governors must be industry Governors who are members primarily engaged in business on the Exchange's Equity Floor or general partners, executive officers (vice president and above) or members associated with member organizations primarily engaged in business on the Exchange's Equity Floor. The Exchange proposes to replace one of these On-Floor Equity Governor positions with an On-Floor PBOT Governor position. Any On-Floor PBOT Governor must be a member of PBOT, which is a subsidiary of the Exchange.

In addition, Article III, Sections 3-6 of the Phlx's By-laws would be amended to provide that recommendations for the PBOT Governor candidate would be submitted to the Exchange's Nominating and Elections Committee by the PBOT Board of Governors.

The Exchange believes that the revised Board of Governors composition, with a PBOT representative Governor, more accurately represents the strategic ownership and on-going business interests of the Exchange, while still affording appropriate proportional representation of On-Floor Governors—with three On-Floor Equity Options Governors, one On-Floor Equity Governor and one On-Floor PBOT Governor.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange revised the statutory basis section of the proposed rule change.

⁴ See Securities Exchange Act Release No. 51127 (February 2, 2005), 70 FR 6918.