register with a member within 90 days following his completion of active service in the Armed Forces of the United States, the person would have 90 days plus two years following the end of the person's active service in the Armed Forces of the United States to become re-registered with a member.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[6] Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act[7] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change provides appropriate tailored relief to persons actively serving in the Armed Forces of the United States by tolling the ''two-year licensing expiration provisions'' in a manner consistent with the goals of investor protection and market integrity.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2005–135) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1307 Filed 1–31–06; 8:45 am]

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[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53176; File No. SR–NYSE–2005–36]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change To Amend Rule 445

January 25, 2006.

I. Introduction

On May 23, 2005, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to amendments to NYSE Rule 445. The Commission published the proposed rule change for comment in the **Federal Register** on July 6, 2005.[3] The Commission received one comment letter on the proposal.[4] On January 17, 2006, NYSE filed a response to the comment letter,[5] as well as Amendment No. 1 to the proposed rule change.[6] This order approves the proposed rule change, grants accelerated approval to Amendment No. 1 to the proposed rule change, and solicits comments from interested persons on Amendment No. 1.

II. Description of the Proposed Rule Change

The proposed rule change consists of amendments to NYSE Rule 445 (the ''Anti-Money Laundering Compliance Rule'') to establish that the ''independent testing'' requirement of the rule must be conducted, at minimum, on an annual calendar-year basis by members and member organizations that conduct a public business, or every two years if no public business is conducted. The amendments also establish a standard to determine who is adequately qualified and sufficiently independent to conduct the required testing. Further, they clarify that each person designated to implement and monitor the Anti-Money Laundering Compliance Rule must either be an employee of the member or member organization for which they are designated or, with the prior approval of the Exchange, an employee of a parent, affiliate, or subsidiary of the member or member organization. Employees of a parent, affiliate, or subsidiary of a member or member organization who are designated to implement and monitor the Anti-Money Laundering Compliance Rule must consent to the jurisdiction of the Exchange and the member or member organization must acknowledge their responsibility to supervise them as employees.

Background and Detail

NYSE Rule 445, which became effective on April 24, 2002,[7] requires each member organization and each member not associated with a member organization to develop and implement an anti-money laundering (''AML'') program consistent with ongoing obligations pursuant to Treasury regulation 31 CFR 103.120 under the Bank Secrecy Act,[8] as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.[9]

The prescribed AML program obligations include the development of internal policies, procedures and controls; the designation of a person to implement and monitor the day-to-day operations and internal controls of the program (commonly referred to as an ''AML Officer''); ongoing training for appropriate persons; and an independent testing function for overall compliance.

Neither the Bank Secrecy Act nor NYSE Rule 445 currently specifies: (1) Timeframes within which the independent testing function must be performed, (2) qualification and independence standards for those who conduct such testing function, or (3) jurisdictional requirements pertaining to AML Officers. In order to provide

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51934 (June 29, 2005), 70 FR 38994 (July 6, 2005).

[4] *See* letter from Alan E. Sorcher, Vice President and Associate General Counsel, Securities Industry Association (''SIA''), to Jonathan G. Katz, Secretary, SEC, dated July 27, 2005 (the ''SIA Letter'').

[5] *See* letter from Mary Yeager, Acting Corporate Secretary, NYSE, to Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, dated January 17, 2006 (the ''NYSE Response'').

[6] Amendment No. 1 amended the rule text to clarify that notice to the Exchange, as opposed to approval by the Exchange, is required if a person holding the AML Officer designation (employed by an entity that directly or indirectly controls, or is controlled by, or is under common control with the member or member organization), is replaced by another person and the structure of the arrangement has been previously approved by the Exchange.

[7] *See* Securities Exchange Act Release No. 45798 (April 22, 2002); 67 FR 20854 (April 26, 2002) (SR–NYSE–2002–10).

[8] Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the Bank Secrecy Act), 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330.

[9] Public Law No. 107–56, 115 Stat. 272 (2001).

interpretive clarity to the text, the following amendments to NYSE Rule 445 were proposed.

Timeframes for Independent Testing

The proposed amendments would require that independent testing of AML programs be conducted, at a minimum, on an annual (calendar-year) basis by members or member organizations that conduct a public business, or every two years if no public business is conducted (*i.e.*, if the member or member organization engages solely in proprietary trading, and/or conducts business only with other broker-dealers). The Exchange believes these timeframes are reasonable in that they require more frequent testing of AML programs designed to monitor a public business, which is likely more susceptible to money laundering schemes than strictly proprietary business. Further, the one-year time frame for testing is consistent with standard industry practice in that it is similar to generally accepted guidelines for conducting tests in the context of, for instance, general audits and branch office visits. However, the proposed amendments make clear that more frequent testing should be conducted if circumstances warrant (*e.g.*, should the business mix of the member or member organization materially change; in the event of a merger or acquisition; in light of systemic weaknesses uncovered via testing of the AML program; or in response to any other ''red flags'').

Qualification and Independence Standards for Testing

With regard to who is adequately qualified and sufficiently independent to conduct the independent testing function, the proposed amendments would require that testing be conducted by a designated person with a working knowledge of applicable requirements under the Bank Secrecy Act and its implementing regulations. Such person need not be an employee of the member or member organization since the responsibility being delegated is essentially an auditing function and, as such, it would not be unusual or ineffective for it to be performed by an independent outside party. As noted below, the proposed amendments require that the day-to-day responsibilities for monitoring operations and internal controls of AML programs be performed by a person fully subject to the supervision of the member or member organization for which they are designated, and to the jurisdiction of the Exchange.

The proposed amendments do not preclude an employee of the member or member organization from conducting the required independent testing of the AML program; however the proposed ''independence'' standard would prohibit testing from being conducted by a person who performs the functions being tested, or by the designated AML Officer, or by a person who reports to either. This standard is designed to promote the independence, and thus the integrity, of the testing function by insulating it from the day-to-day administration of the activities being tested. It also serves to remove the testing function from the supervisory structure of the member or member organization, thus eliminating the possibility that a person might not candidly report shortcomings in a system designed by their supervisor for fear of reprisal.

Jurisdiction Over AML Officers

The proposed amendments clarify that the AML Officer designated to implement and monitor a member's or member organization's AML Program must either be an employee of the member or member organization for which they are designated or, with the prior approval of the Exchange, an employee of a parent, affiliate or subsidiary of the member or member organization.[10]

The rationale behind the proposal to allow employees of parents, affiliates and subsidiaries to be designated AML Officers of members and member organizations is the recognition that AML programs may be integrated into, and extend throughout, the corporate family. Accordingly, a person acting as an AML Officer for both a member organization and the member organization's parent bank would be better situated to see the ''big picture'' (*i.e.*, to monitor the movements of funds and securities throughout the corporate structure and, thus, be better able to identify and understand AML issues across the range of such structure). The ability to situate AML Officers where they can be most effective gives members and member organizations the flexibility to integrate their AML program into the larger corporate structure to achieve a more global perspective, and thus a more comprehensive and effective AML program.

The prior written approval of the Exchange is required if the designated AML Officer is other than an employee of the member or member organization. Further, each such person must execute an attestation, acceptable to the Exchange, consenting to the supervision of each member or member organization for which they are designated and to the jurisdiction of the Exchange. A proposed example of such an attestation is included in Exhibit 3 of the proposed rule change, under the heading ''AML Officer Consent to Jurisdiction.''[11] In addition, the member or member organization must execute an agreement, acceptable to the Exchange, acknowledging their responsibility to supervise, as an employee for all regulatory purposes, each such person designated by them. A proposed example of such an agreement is included in Exhibit 3 of the proposed rule change under the heading ''Acknowledgement of Supervisory Responsibility over AML Officer.''[12]

III. Summary of Comments Received and NYSE Response

The Commission received one comment letter from the SIA on the proposal and a response to the comment letter by NYSE.

The SIA Letter noted that the ''NYSE proposal provides that the AML Compliance Person/Officer may be an employee of a parent, affiliate or subsidiary of the member or member organization with the 'prior approval of the Exchange.' ''[13] In the SIA's view prior approval should not be required because it would be impractical to obtain prior approval for each and every personnel change.[14]

The NYSE Response indicated that NYSE ''has a strong regulatory interest in retaining the right to review 'outside' AML Officer arrangements to make certain practical determinations (*e.g.*, whether the proposed arrangement is structured such that the AML Officer will be positioned to effectively implement the member organization's AML Program, and whether he or she will have sufficient time and resources to monitor the Program's day-to-day operations and internal controls).''[15] NYSE, however, indicated that its interests rest primarily in reviewing the structure of the arrangement in which an ''outside'' AML Officer is

[10] If a person holding the AML Officer designation is to be replaced by another person, and the structure of the arrangement has been previously approved by the Exchange, then notice to the Exchange of the designation change would be sufficient if the previously approved arrangement remained substantively unchanged.

[11] Exhibit 3 of the proposed rule change is available on the NYSE's Web site (*www.NYSE.com*), at the NYSE's principal office, and at the Commission's Public Reference Room.

[12] *Id.*

[13] SIA Letter, *supra* note 4, at 3–4.

[14] *Id.* at 4.

[15] NYSE Response, *supra* note 5, at 2.

employed.[16] Accordingly, NYSE filed Amendment No. 1 to the proposed rule change to provide that ''if a person holding the AML Officer designation is to be replaced by another person, and the structure of the arrangement has been previously approved by the Exchange, then notice to the Exchange of the designation change would be sufficient if the previously approved arrangement remained substantively unchanged.'' [17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–36. 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 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–2005–36 and should be submitted on or before February 22, 2006.

V. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of sections 6(b)(5) [18] of the Exchange Act.[19] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change is designed to accomplish these ends by requiring members to conduct periodic tests of their AML compliance programs, preserve the independence of their testing personnel, and ensure the accuracy of their AML compliance program.

Accelerated Approval of Amendment No. 1

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act. Amendment No. 1 provides that notice to the Exchange, as opposed to approval by the Exchange, is required if a person holding the AML Officer designation (employed by an entity that directly or indirectly controls, or is controlled by, or is under common control with the member or member organization), is replaced by another person and the structure of the arrangement has been previously approved by the Exchange. Permitting Exchange members to submit a notice instead of seeking prior approval, in circumstances where the structure of the arrangement in which an outside AML Officer is employed has not changed, will permit the Exchange to monitor compliance while minimizing any regulatory burden on members. Accordingly, the Commission believes that accelerated approval of Amendment No. 1 is appropriate.

VI. Conclusions

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change, as amended (SR–NYSE–2005–36), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1227 Filed 1–31–06; 8:45 am]

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[16] *Id.*

[17] *Id.*

[18] 15 U.S.C. 78f(b)(5).

[19] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53180; File No. SR–Phlx–2005–90]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Session Fee Increase for the Regulatory Element of the Continuing Education Program

January 26, 2006.

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 December 23, 2005, 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 Phlx. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Phlx under Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] 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 Phlx proposes to amend its schedule of fees to increase the Regulatory Element Session fee from $60 to $75 effective January 1, 2006. The text of this proposed rule change is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).