

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 PCX 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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of PCX. All submissions should refer to File No. PCX-2002-25 and should be submitted by May 30, 2003.

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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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47794; File No. SR-Phlx-2003-27]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, by the Philadelphia Stock Exchange, Inc. Relating to the Amendment of Price Criteria for Certain Securities that Underlie Options Traded on the Exchange**

May 5, 2003.

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 April 23, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 30, 2003, the Phlx filed Amendment No. 1 to the proposal.<sup>3</sup> The proposed rule change, as amended, has been filed by Phlx as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Phlx proposes to amend Commentary .01 to Phlx Rule 1009 to allow the Exchange to list options series on covered securities, as defined under Section 18(b)(1)(A) of the Securities Act of 1933 ("Covered Securities"),<sup>5</sup> where

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

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

<sup>3</sup> See letter from Jurij Trypupenko, Counsel and Director of Litigation and Operations, Legal Department, Phlx to Terri Evans, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a technical correction by inserting rule text that had been inadvertently omitted in the original filing.

<sup>4</sup> 17 CFR 240.19b-4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on April 30, 2003, the date Phlx filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>5</sup> Section 18(b)(1)(A) of the Securities Act of 1933 (the "1933 Act") provides that "[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed or authorized for listing on the National Market

the closing market price of the underlying Covered Securities was at least \$3.00 per share for the five consecutive business days prior to the date that the Phlx submits an option class certification for listing and trading options to the Options Clearing Corporation ("OCC"). The listing criteria will remain the same for non-Covered Securities.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics* and proposed deletions are in [brackets.]

\* \* \* \* \*

**Rule 1009. Criteria for Underlying Securities**

(a) No change.

(b) No change.

(c) No change.

Commentary:

.01 The Board of Governors has established guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. Absent exceptional circumstances with respect to items 1, 2, 3, or 4 listed below, at the time the Exchange selects an underlying security for Exchange options transactions, the following guidelines with respect to the issuer shall be met:

(1) No change.

(2) No change.

(3) No change.

(4) (i) *If the underlying security is a "covered security" as defined in Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least \$3.00 for the previous five (5) consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation for listing and trading. For purposes of this rule, the market price of such underlying security is measured by the closing price reported in the primary market in which the underlying security is traded.*

[Either (i)](ii) *If the underlying security is not a "covered security," the market price per share of the underlying security has been at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days or [(ii)] (a) the underlying security meets*

System of the Nasdaq Stock Market (or any successor to such entities) \* \* \*." 15 U.S.C. 77r(b)(1)(A). The term "Covered Security," for the operation of proposed Commentary .01 to Phlx Rule 1009, will not include those securities defined in Section 18(b)(1)(B) of the 1933 Act. 15 U.S.C. 77r(b)(1)(B).

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