

the guidelines for continued listing in Rule 1010; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months proceeding the date of selection has been at least 5,000 contracts.

(5) No change.

.02 No change.

.03 No change.

.04 No change.

.05

(a) through (c) No change.

(d) In the case of a Restructured Transaction that satisfies either or both of the conditions of subparagraphs (a)(1) or (2) above in which shares of the restructure security are sold in a public offering or pursuant to a rights distribution: (i) the Exchange may assume the satisfaction of one or both of the requirements of paragraph (1) and (2) of Commentary .01 above on the date the restructure security is selected for options trading only if (A) the applicable conditions set forth in paragraph (c)(i) above are met with respect to whichever of these requirements is assumed to be satisfied, or (B) the condition set forth in paragraph (c)(ii) above is met, in either case subject to the limitations stated in said paragraph (c); (ii) the Exchange may certify that the market price of the restructure security satisfies the requirement of paragraph (4) of Commentary .01 above by relying on the market price history of the original security prior to the ex-date for the Restructure Transaction in the manner described in paragraph (a) above, but only if the restructure security has traded "regular way" on an exchange or automatic quotation system for at least five trading days immediately preceding the date of selection, and at the close of trading on each trading day preceding the date of selection, as well as at the opening of trading on the date of selection the market price of the restructure security was at least \$7.50 or, if the restructure security is a "covered security" as defined in paragraph (4) of Commentary .01 above, the market price of the restructure security was at least \$3.00; and (iii) the Exchange may certify that the trading volume of the restructure security satisfies the requirement of paragraph (3) of Commentary .01 above only if the trading volume in the restructure security has been at least 2,400,000 shares during a period of 12 months or less ending on the date the restructure security is selected for options trading.

.06 No change.

.07 No change.

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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, the 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. 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

The purpose of the proposed rule change is to amend the pricing requirement to initially list options overlying Covered Securities that have traded at a price of \$3.00 or higher 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 OCC. The proposal would allow the Exchange to act competitively in listing options pursuant to a listing standard similar to one that has been adopted by other options exchanges.⁶

The Exchange is proposing to amend its pricing requirement for underlying securities in Commentary .01 to Phlx Rule 1009 to provide that, for underlying securities that are deemed to be Covered Securities, the closing market price of the underlying security must be at least \$3.00 per share for the five consecutive business days prior to the date on which Phlx submits an option issue certification to the OCC. The \$7.50 price per share requirement would continue to apply to underlying securities that are not Covered Securities. In particular, for non-Covered Securities, Commentary .01 to Phlx Rule 1009 would continue to require that the market price per share of any underlying security must be at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection of an option class, as measured by the lowest

closing price reported in any market in which the underlying security traded on each of the subject days.⁷ When the \$7.50 price requirement was first implemented, the listed options market was in its infancy. Now, more than twenty-eight years after the Phlx first started trading listed options, the Exchange believes that the options market is a mature market with sophisticated investors. The Exchange does not believe that the \$7.50 initial listing criteria serves to accomplish its presumed intended purpose of preventing the proliferation of option issues on overlying securities that lack liquidity needed to maintain fair and orderly markets. Phlx now seeks to move away from the current approach to listing standards and allow the desires of its customers and the workings of the marketplace to determine the securities that underlie the option that the Exchange will list.

Due to recent trends in the securities markets, which include, among other things, a precipitous decline in the price of many securities, there has been a marked increase in the number of underlying securities that, but for the current pricing standard, would otherwise qualify for options listing on the Exchange. The Phlx states that changing the pricing standard to the proposed \$3.00 market price per share requirement would allow it to evaluate whether to list options on a greater number of classes without compromising investor protection. In doing so, the Exchange would endeavor to ensure that its own systems and those of the Options Price Reporting Authority have the capacity to handle the potential increased capacity requirements.

The Exchange notes that although this proposal amends the minimum closing market price for an underlying security which is deemed a Covered Security, as well as the time period for which it must trade at that price before its overlying option can be listed on the Exchange, the Phlx will otherwise continue to maintain its initial listing standards. The Exchange does not

⁶ See Securities Exchange Act Release Nos. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (SR-CBOE-2002-62); 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (SR-PCX-2003-06); 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (SR-ISE-2003-04); and 47613 (April 1, 2003), 68 FR 17120 (April 8, 2003) (SR-Amex-2003-19).

⁷ In the alternative to the \$7.50 price requirement, an option on a non-Covered Security may meet the requirements provided in Commentary .01 to Phlx Rule 1009 when: (a) The underlying security meets the guidelines for continued listing in Phlx Rule 1010; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been at least 5,000 contracts. Telephone conversation among Jurij Trypupenko, Counsel and Director of Litigation and Operations, Legal Department, Phlx, Terri Evans, Assistant Director, Division, Commission, and Tim Fox, Attorney, Division, Commission on April 28, 2003.