

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 filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2003-20 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48313; File No. SR-Phlx-2003-49]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Member Voting

August 8, 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 July 11, 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. 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 Certificate of Incorporation, Article Fifth (e) as well as Exchange By-Law Article III, Sections 3-7(a), 3-10(c), and 3-13; Article XII, Section 12-1(b); and Article XXII, Sections 22-1 and 22-2, to

provide that for each matter submitted to a vote of the membership,<sup>3</sup> except as provided by Article Thirteenth of the Certificate of Incorporation, each regular member shall be entitled to one vote for each regular membership, the legal title<sup>4</sup> of which is registered in the name of such regular member. The text of the proposed rule change is below. Additions are *italicized*; deletions are in brackets.

\* \* \* \* \*

#### Certificate of Incorporation of Philadelphia Stock Exchange

First-Fourth: No change.

Fifth (a)-(d): No change.

(e) *Except as otherwise provided in Article Thirteenth hereof, on each matter submitted to a vote of the membership, each Regular Member shall be entitled to one vote for each Regular Membership the legal title of which is registered in the name of such Regular Member.*

\* \* \* \* \*

#### By-Laws of Philadelphia Stock Exchange

Article III—Nominations—Annual Election—Meetings

Sec. 3-1-3-6: No change.

Members May File Independent Nominations—Requirements

Sec. 3-7. (a) Independent nominations for the positions of On-Floor, and Off-Floor Governors on the Board of Governors may be made by a written petition filed with the Secretary of the Exchange in a sealed envelope within two (2) weeks after the posting of the report of the Nominating and Elections Committee. No such nomination shall be valid unless it is signed by [not less than fifty (50)] members *holding legal title to not less than fifty (50) regular memberships*. No member shall endorse more than one (1) nominee; provided, however, that [seventy-five (75)] members *holding legal title to seventy-five (75) regular memberships* may, by petition, propose an entire ticket, or any portion thereof, for the vacancies on the Board of Governors to be filled at the ensuing election. A person is not eligible for an independent nomination for a position on the Board of Governors if one (1) or more persons associated with his member or participant organization, as defined in By-Law Section 3-6(c),

would be serving an unexpired term or terms on the Board upon the commencement of his term of office. No more than one (1) person associated with the same member or participant organization, as defined in Section 3-6(c), shall be certified by the Nominating and Elections Committee for independent nomination to a position on the Board of Governors. In the event more than one such nomination is received, the Nominating and Elections Committee shall not certify any such candidates. A person who has previously accepted nomination by the Nominating and Elections Committee for one (1) category of Governor (e.g. On-Floor or Off-Floor Governor) is not eligible to qualify as an independent candidate in any category. There may be no independent nominations of incumbent Governors whose terms do not expire following the next election. The Nominating and Elections Committee and the Secretary of the Exchange shall open such envelopes, and if found eligible for election, the persons nominated by petition conforming with the foregoing provisions shall be deemed nominees for such positions on the Board of Governors. The names of all nominees for membership on the Board of Governors, whose nominations conform with By-Law requirements, shall be sent to all members of the Exchange by the Secretary as promptly after the third Monday of February as is reasonably possible. The order of nominees' names on notices and on the ballot shall be determined through a drawing by lot conducted by the Nominating and Elections Committee.

Sec. 3-7 (b)-(c): No change.

Sec. 3-8-3-9: No change.

#### Special Meetings

Sec. 3-10. Except as otherwise specifically provided by law, special meetings of the members may be called at any time:

(a) By the Chairman of the Board of Governors; or

(b) By a majority of the Board of Governors; or

(c) By *members holding legal title to a majority of all regular memberships* entitled to vote.

Upon the written request of any person entitled to call a special meeting, which request shall set forth the purpose for which the meeting is desired, it shall be the duty of the Secretary to give prompt written notice of such meeting to be held at such time as the Secretary may fix, subject to the provisions of Section 3-11 hereof. If the Secretary shall fail to fix such date and give such notice within ten (10) days

<sup>3</sup> For instance, members vote for industry governors. See Phlx By-Law Article 3-2.

<sup>4</sup> Legal title is registered in the name of a member pursuant to a lease agreement or under an A-B-C agreement (membership title and use agreement) pursuant to Phlx Rules 930 and 940.

<sup>8</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.