

and/or give proxies⁵ for each and every membership. Additionally, the amendments would allow titleholders to sign multiple times representing each regular membership they hold legal title to with respect to independent nominations for industry governors, to be counted for quorum purposes, to be counted for purposes of calling a special membership meeting, and to be counted for purposes of offering any amendment to the By-Laws or requesting the calling of a special meeting of the membership to vote on a proposed By-Law amendment. Finally, the Exchange believes that these amendments would allow all legal titleholders to participate fully in Exchange governance opportunities whereas under current interpretation of the By-Laws legal titleholders with multiple legal titles to regular memberships registered in their name are allowed only one vote.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(3) of the Act⁷ in particular, in that the rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs by providing for legal titleholders that own more than one regular membership to participate more fully in Exchange governance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

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 Exchange 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 proposed rule change 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 the Phlx. All submissions should refer to file number SR-Phlx-2003-49 and should be submitted by September 9, 2003.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48323; File No. SR-Phlx-2003-43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to By-Law Article 12-11, Use of Facilities

August 12, 2003.

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 June 2,

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to 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 Phlx. 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 By-Laws to limit the liability of The Options Clearing Corporation ("OCC") to members and member organizations resulting from their use of the Intermarket Options Linkage ("Linkage").

The text of the proposed rule change is below. Proposed additions are in *italics*.

* * * * *

Sec. 12-11 Use of Facilities of Exchange

SEC. 12-11. The Exchange shall not be liable for any damages sustained by a member or a member organization growing out of the use or enjoyment by such member or member organization of the facilities afforded by the Exchange to members for the conduct of their business. *The Options Clearing Corporation shall not be liable to members and member organizations with respect to the use, non-use or inability to use the Intermarket Options Linkage, including without limitation the content of orders, trades, or other business facilitated through the Intermarket Options Linkage, the truth or accuracy of the content of messages or other information transmitted through the Intermarket Options Linkage, or otherwise.*

* * * * *

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 had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

⁵ Exchange By-Law Article III, Section 3-12 (Right to Vote) provides as follows: Each regular member of the Exchange in good standing shall be entitled to vote at any election of the Exchange. Each such member may vote in person or by proxy under such regulations as the Nominating and Elections Committee, with the approval of the Board of Governors, may direct.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(3).