

companies.⁶ After the Exchange's currently pending corporate governance proposals become final, a majority independent board will become an Exchange listing standard.⁷ As a result, the Exchange believes that board approval of a voluntary delisting is all that must be required by the Exchange.

The Exchange further believes that neither advance notification to shareholders nor a company press release need be mandated under Exchange rules. In the case of a transfer of a listing from one market to another, both the company transferring and the market to which it is transferring are typically eager to publicize the event.⁸ Practical considerations such as the need to make brokers and investors aware of a change in ticker symbol also serve to insure that a planned move is visible. In any event, companies are obligated to publicly disclose material events,⁹ and the Exchange expects that a company that has made a final determination to voluntarily delist its securities from the Exchange would promptly disclose that determination to the public.¹⁰

The Exchange has for many years replicated Rule 500 in Section 806 of its Listed Company Manual, which is a separate compendium of rules applicable to listed companies. In making this change, the Exchange will delete Rule 500 in its entirety. The remaining requirement of board approval and notice thereof to the

Exchange will be codified in section 806 of the Listed Company Manual.

2. Statutory Basis

The NYSE represents that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5)¹¹ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not 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

Written comments were neither solicited nor 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 self-regulatory organization consents, the Commission will:

A. By order approve the 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. 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 NYSE. All submissions should refer to file number SR-NYSE-2003-23 and should be submitted by October 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48430; File No. SR-Phlx-2003-52]

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 a System Change to a Pilot Program to Disengage AUTO-X the Automatic Execution Feature of the Exchange's Automated Options Market (AUTOM)

September 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on July 14, 2003, 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 the Phlx. On August 26, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Richard S. Rudolph, Director and Counsel, Phlx, to Marc McKayle, Special Counsel, Division of Market Regulation ("Division"), Commission, dated August 25, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the proposed rule change to clarify that the specified disengagement size would continue to be subject to the approval of the Options Committee and would be posted on the Exchange's Web site for each option.

⁶ See Press Release from Investor Responsibility Research Center, March 7, 2002, available at www.irrc.com/company/06062002_NYSE.html.

⁷ See Securities Exchange Act Release No. 47672 (April 11, 2003), 68 FR 19051 (April 17, 2003) (SR-NYSE 2002-33). Under the Exchange's proposed standards, a controlled company will not be required to have a majority independent board. Here too, however, a board that is acceptable under the new Exchange standards should be appropriate to make a delisting decision.

⁸ The company referred to in footnote 3 above that transferred to Nasdaq issued a press release announcing that fact approximately one month prior to the actual transfer.

⁹ See Sections 202.05 and .06 of the Exchange's Listed Company Manual. The Exchange also notes that pending proposed amendments by the SEC to Form 8-K will require a Form 8-K filing when a company has taken definitive action to terminate a listing, including by reason of a transfer to another market. See Securities Exchange Act Release No. 46084 (June 17, 2002), 67 FR 42914 (June 25, 2002) (File No. S7-22-02).

¹⁰ When reviewing this proposed rule change, members of the Exchange's Pension Managers Advisory Committee as well as members of the Exchange's Board of Directors observed that companies should not voluntarily delist from the Exchange without investors in their stock having advance notice of the event. For the reasons stated above, the Exchange believes that there will be adequate public notice. If, however, for some reason disclosure is not made by the company or a third party when such disclosure is warranted, then the Exchange itself will publicly announce the planned delisting.

¹¹ 15 U.S.C. 78f(b)(5).