

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

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Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Demutualization of the Philadelphia Stock Exchange, Inc.

November 26, 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 November 17, 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 November 24, 2003, the Phlx submitted Amendment No. 1 to the proposed rule change.³ On November 26, 2003, the Phlx submitted Amendment No. 2 to the proposed rule change.⁴ 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, pursuant to Section 19(b)(1) and Rule 19b-4 thereunder,⁵ proposes

to: (i) First amend Article FOURTH of its Certificate of Incorporation to eliminate the terms providing that it is "not for profit" and that "no dividend shall ever be paid by the Corporation" ("Plan of Conversion" and such amendment to the Certificate of Incorporation, the "Conversion Amendment"); and (ii) subsequently merge a newly created, wholly-owned shell subsidiary of the Phlx with and into the Phlx, with the Phlx surviving as a "demutualized"⁶ Delaware stock corporation (the "Merger," and together with the Plan of Conversion, the "Plan of Demutualization") pursuant to an Agreement and Plan of Merger ("Merger Agreement").⁷ In connection with the Plan of Demutualization, the Phlx will amend its Certificate of Incorporation ("Certificate of Incorporation"), By-laws ("By-laws") and Rules of the Board of Governors, Option Rules, ITS Rules and Options Floor Procedure Advices (collectively, the "Rules").⁸ The Phlx will, upon completion of the Demutualization, issue pursuant to the Merger Agreement 100 shares of its Class A Common Stock to each equitable titleholder of an Exchange membership. As discussed more fully below, the Phlx will also issue one share of Series A-1 Preferred Stock, par value \$0.01 ("Series A Preferred Stock") to the "Phlx Member Voting Trust" (the "Trust") in accordance with an Amended and Restated Trust Agreement ("Trust Agreement").

The proposed changes to the Certificate of Incorporation, the By-laws and the Rules, as well as the Trust Agreement and the Conversion Amendment are collectively referred to herein as the "Proposed Rule Change." The text of the amendments to the Certificate of Incorporation, By-laws and Rules is available at the Office of the Secretary, the Phlx, and at the Commission.

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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, at the Commission, and on the Commission's website.

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 implement the Plan of Demutualization of the Phlx. In connection with such Plan of Demutualization, trading privileges will be separated from corporate ownership of the Phlx and will be made available exclusively through trading permits, as described in greater detail below.⁹

As a result of the Demutualization, the total of 50,500 shares of Class A Common Stock (100 shares per Seat) issued to existing equitable Seat holders will represent 100% of the common equity ownership in the Phlx outstanding immediately after the Demutualization, and all Members and holders of equity trading permits¹⁰ who are affiliated with Member Organizations and are not suspended will be entitled to receive new Series A-1 Permits (described further below) to enable them to continue their activities on the Exchange without interruption. Similarly, Member Organizations will maintain their status upon their compliance with certain deposit and registration requirements, as described in greater detail below.

After the effective date of the Demutualization, the Exchange will continue to be a national securities exchange registered under Section 6 of the Act.¹¹ Except as will be necessary to implement the new permit structure to replace the existing structure of owning and leasing Seats as a basis for trading rights and Exchange memberships, the

⁹ The Exchange, however, does plan to retain its existing Foreign Currency Option ("FCO") participations (as defined in Section 1-1(m) of the current By-laws). After the Demutualization, the ability to trade FCOs on the Phlx will also be available through a Series A-1 Permit, as set forth in proposed Rule 908(b).

¹⁰ Pursuant to Rule 23 of the existing Phlx Rules, the Exchange has issued equity trading permits ("ETPs"), four of which are currently outstanding. As described in greater detail below, in the Demutualization, these ETPs will be eliminated in accordance with existing Rule 23 and pursuant to proposed Rule 971, and the rights and privileges of ETPs will be conferred on existing ETP holders by Permits, as described below.

¹¹ 15 U.S.C. 78f.

¹⁶ 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 Edith Halihan, Deputy General Counsel, Phlx to Nancy Sanow, Assistant Director, Commission, Division of Market Regulation ("Division") dated November 21, 2003.

("Amendment No. 1"). In Amendment No. 1, the Phlx made technical conforming changes to the exhibits of the proposed rule change.

⁴ See Letter from Edith Halihan, Deputy General Counsel, Phlx to Nancy Sanow, Assistant Director, Commission, Division dated November 26, 2003. ("Amendment No. 2"). In Amendment No. 2, the Phlx amended the proposed rule change to reflect that on November 25, 2003, the members of the Phlx (as that term is defined in Section I-1(b) of the current By-laws of the Phlx, the "Members") approved the Plan of Conversion, the Merger, and all transactions to be effected in connection therewith. Also, on November 18, 2003, holders of equitable title ("Owners") to memberships in the Phlx (each such membership a "Seat") voted to approve the Plan of Demutualization as a whole.

⁵ 17 CFR 240.19b-4

⁶ This process is also referred to in this notice as the "Demutualization."

⁷ Under the existing Certificate of Incorporation and By-laws and applicable law, the approval of the Owners is not required to effect the Plan of Demutualization.

⁸ In certain limited cases, the proposed rule change also reflects the deletion of obsolete provisions and other necessary updates in the By-laws and the Phlx Rules that are not directly related to the Plan of Demutualization and are summarized in greater detail below.