

Nomination and Election of Governors

The nomination and election procedures of the Phlx will be revised to ensure continuing fair representation for Members and Member Organizations in the context of the demutualized Exchange, while at the same time adapting the Exchange to its proposed status as a demutualized business corporation with stockholders. Generally, the new nomination and election structure of the Exchange will be as follows:

- The Non-Industry Governors, Off-Floor Governors and the Chairman of the Board will continue to be nominated by the Nominating and Elections Committee and will be elected by the holders of the common stock at meetings of stockholders, as described below.

- Stockholders will be permitted to make independent nominations of Non-Industry and Off-Floor Governors upon written notice of the nominations not less than 90 nor more than 120 days before the first Monday in February of each year (or such other date as the Board may establish). These nominations will be subject to review by the Nominating and Elections Committee.

Member Organizations, as described below, will designate the On-Floor Governors in accordance with the following procedures:

- On-Floor Governors will be nominated by the Nominating and Elections Committee from recommendations made: (i) By members of the Nominating and Elections Committee; or (ii) by any Member, participant or Member Organization Representative.

- Independent nominations by Member Organization Representatives will be valid only if signed by Member Organization Representatives representing no less than 50 votes.

- Member Organizations, through their authorized Member Organization Representative, will vote for designated On-Floor Governors among nominees so selected at the annual meeting of Members and Member Organizations.

- Nominees for Governors receiving the highest numbers of votes for the category of Governor for which they were respectively nominated as candidates will be declared the "Designated Nominees" for those offices. In case of a tie, the Nominating and Elections Committee will make the selection as to who among the tying nominees shall be designated.

- On-Floor Governors will then be elected by the Trust owning the share of Series A Preferred Stock based on the

"Designated Nominees" elected by the Member Organization Representatives as described above.

Governors—Vacancies and Removal

In accordance with Section 3–8 of the proposed By-laws, vacancies (including vacancies created by increases in the size of the Board of Governors) will continue to be filled by the Nominating and Elections Committee, upon approval by a majority of the Governors. With respect to the removal of Governors, Article SIXTH(b) of the proposed Certificate of Incorporation and Sections 3–3 and 4–4 of the proposed By-laws will provide that Governors may be removed only for cause or, under certain circumstances, upon recommendation by a majority of the Board of Governors. In addition, Governors may be removed only by a 66⅔% vote of the group that elected them (*i.e.*, the holders of common stock, in the case of the Non-Industry or Off-Floor Governors, or the shares of Series A Preferred Stock as instructed by a vote of the Member Organization Representatives, in the case of the On-Floor Governors).

An On-Floor Governor may be removed at any annual or special meeting. A special meeting for the removal of an On-Floor Governor may be called by the Chairman of the Board of Governors or the Board of Governors or, only in the case of a special meeting of Member Organization Representatives for the purpose of voting on the removal of an On-Floor Governor, by the Member Organization Representatives representing a majority of the then issued and outstanding permits. If such a meeting is proposed to be called by Member Organization Representatives, such Member Organization Representatives must provide the Chairman written notice prior to calling any such meeting stating in reasonable detail the basis for, and the facts and circumstances purported to warrant, such removal of the relevant On-Floor Governor.

Committees

No changes will be made in Board committee structure or composition as part of the Demutualization process, except as follows:

- Pursuant to Sections 10–6 and 10–17 of the proposed By-laws, respectively, at least half of the Admissions Committee and the Foreign Currency Options Committee, respectively, will have to be Members, participants or persons affiliated with Member Organizations or participant organizations;

- Pursuant to Sections 10–20 and 10–16 of the proposed By-laws, respectively, at least half of the Options Committee and the Floor Procedure Committee, respectively, will have to be Members or persons affiliated with Member Organizations;

- Pursuant to Section 10–6 of the proposed By-laws, the Business Conduct Committee will share jurisdiction over the revocation of permits and foreign currency options participations in connection with disciplinary matters with the Admission Committee; and

- Pursuant to Section 10–7(a) and (b) of the proposed By-laws, certain term limits applicable to members of the Allocations Committees will be eliminated.

The existing Governance Documents do not include any specification as to the composition of the Admissions Committee, Foreign Currency Options Committee, the Options Committee or the Floor Procedure Committee and, therefore, do not require the committees to include any Industry Governors. Accordingly, the Proposed Rule Change will ensure participation of Industry Governors in each of these committees, thereby allowing Industry Governors to influence decisions made in vital areas of day-to-day trading operations and membership matters. The elimination of term limits respecting the Allocations Committees is intended to achieve consistency with most other committees, which do not have such limits.

Management and Executive Officers

The management structure of the Exchange, including its executive officers, will remain unchanged in the Demutualization in accordance with Article V of the proposed By-laws. The CEO position will continue to be a full-time position to be appointed by the Board, and the holder of this position will act as its Chairman. The person acting as CEO at the time of the Demutualization will be the only nominee for the position of Chairman of the Board, and will be elected by the votes of the holders of the common stock. The existing requirement that the CEO may not be a partner of a Member (or participant) Organization, nor an employee, agent, consultant, officer, director or stockholder of a Member (or participant) Organization will be retained. The CEO will appoint the other officers of the Exchange.

Limitation of Liability and Indemnification

Articles FIFTEENTH and SIXTEENTH of the proposed Certificate of