

Incorporation and Section 4–18 of the proposed By-laws will include provisions substantially similar to the Article EIGHTEENTH of the existing Certificate of Incorporation, in accordance with Section 145 of the Delaware General Corporation Law. Such provisions eliminate the personal liability of Governors (and other persons mentioned below) for monetary damages for breach of fiduciary duty as a Governor, except for liability:

- For any breach of the Governor's duty of loyalty to the Phlx or its stockholders;
- For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- Under Section 174 of the Delaware General Corporation Law regarding unlawful dividends and stock purchases; or
- For any transaction from which the Governor obtained an improper personal benefit.

The proposed Certificate of Incorporation and By-laws will further permit the Phlx to indemnify to the fullest extent permitted under and in accordance with the laws of the State of Delaware any Governor (or director) or officer of the Phlx, and any person that is or was serving at the request of the Phlx as a Governor, committee member or in-house legal counsel, officer, director (or person in similar position), employee or agent of another corporation or of a partnership (general or limited), limited liability company, joint venture, trust or other enterprise or business entity, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with any action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Phlx, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. The Phlx may also pay the expenses of indemnified persons incurred in defending a suit or proceeding in advance of the final disposition of the suit or proceeding. The proposed Certificate of Incorporation will also permit the Phlx to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in that capacity. The Exchange believes that these indemnification provisions are substantially similar to those generally employed by other Delaware stock corporations and the scope of the

persons covered is intended to continue to attract and retain qualified personnel.

### *C. Permits and Trading Rights*

#### *Issuance of Permits and Application Process*

Under the proposed Plan of Demutualization, access to the Exchange facilities and the right to trade will be conferred by the newly-issued permits rather than by ownership or leasing of Seats of the Exchange. As discussed above, trading of foreign currency options will continue to be allowed through the existing FCO participations, but, after Demutualization, will also be permitted through permits, as will be provided in proposed Rule 908(c)(i).

Proposed Rule 971 will provide that all ETPs and ETP use agreements will terminate with immediate effect as of the close of trading on the day the Merger becomes effective without any further action on the part of any party thereto. Similarly, proposed Rule 971 will also provide that all leases of Seats and all leases and A–B–C agreements with respect to such Seats, will terminate with immediate effect as of the close of trading on the day the Merger becomes effective without any further action on the part of any party thereto. All provisions in the Certificate of Incorporation, By-laws and Rules relating to the transfer or lease of a Seat or A–B–C agreement, and all defined terms related thereto (such as “Lessor” and “Lessee”) will be amended as necessary to reflect that, after the Demutualization, these provisions and defined terms will only apply to FCO participations. These provisions will no longer be applicable to permits, because permits (including the Series A–1 Permits) will not constitute property that can be transferred by its holder (except within the same member Organization). Similarly, the provisions relating to ETPs, such as Rule 23, will be deleted.

To provide an orderly transition from Seats to permits, proposed Rule 972 will allow each Member (including, without limitation, each holder of an equity trading permit), inactive nominee and Member Organization holding that status immediately before the effective time of the Merger that, at that time, is not subject to any suspension of that status, to maintain that status. All Members and ETP holders who fulfill the requirements described in the previous sentence will receive Series A–1 Permits immediately upon the Demutualization.

Proposed Rule 972 will also provide that existing Member Organizations will maintain their status for a period of 15

days following the Merger. Each Member Organization, however, will have to provide to the Admissions Committee and the Exchange, as applicable, before the end of the 15-day period, the following:

- The security deposit or alternative compliance with proposed Rule 909 (the “security requirement”) (as described below);
- The form to be filed by the Member Organization's qualifying permit holder; and
- The designation of the Member Organization's Member Organization Representative in the form prescribed by the Exchange.

If a Member Organization fails within that period to comply with the security requirement and/or to furnish the form to be filed by the Member Organization's qualifying Member, the Member Organization's status as such will immediately be suspended. If a Member Organization fails to designate a Member Organization Representative, the Member Organization may not exercise any voting rights with respect to any permits held by persons who are associated with the Member Organization.

#### *Classes or Series of Trading Permits*

Immediately after the Demutualization, pursuant to Section 12–1 of the proposed By-laws and proposed Rule 908, there will be only one series of permit, called the “Series A–1 Permit,” which will confer upon its holder all the rights and privileges of a Member of the Exchange. An individual will be allowed to hold a Series A–1 Permit if he or she meets the qualification criteria that will be set forth in Article XII of the proposed By-laws and Rules 901 and 908 and/or may be imposed by the Admissions Committee (which criteria the Exchange intends will remain largely the same as they were before the Demutualization), including the requirements that a Member be an individual at least 21 years of age and be associated with a Member Organization.<sup>29</sup> Pursuant to Sections 12–1 and 12–4 of the proposed By-laws and proposed Rule 908(b), Series A–1 Permits will be limited or unlimited in number and may be issued from time to time by the Exchange, as determined by the Board in its sole discretion.

<sup>29</sup> Under Sections 12–2 and 12–4 of the proposed By-laws, Stock Clearing Corporation of Philadelphia (“SCCP”), as an eligible corporation, may hold a permit but will continue not to be subject to the qualification criteria applicable to persons seeking a permit. SCCP, a subsidiary of the Phlx, is a registered clearing agency.