

After Demutualization, Section 12–1 of the proposed By-laws will empower the Board to:

- Authorize the issuance of an unlimited or restricted number of additional permits;
- Terminate or eliminate any class or series of permits; and
- Create additional classes or series of permits.

Any of these actions, however, will continue to be subject to Commission review and/or approval. In accordance with Section 12–3 of the proposed By-laws, no person will be allowed to hold more than one permit.

Pursuant to proposed Rule 971, separate equity trading permits currently issued and outstanding will be eliminated and be replaced by the Series A–1 Permits described above.

#### Qualifications

Initially, except to the extent provided in applicable product and/or activity criteria set forth in the proposed Rules, qualifications and other requirements for Members to conduct certain activities (*e.g.*, to act as a specialist or a floor broker), to trade certain products (*e.g.*, special capital requirements for specialists for certain equity securities, allocation of books and Registered Options Trader assignments) or to use specific facilities of the Exchange (*e.g.*, testing requirements for use of certain Exchange technology) will remain largely the same as they were before the Demutualization.

#### Member Organizations and Member Organization Representatives

As under the current structure, a Member will continue to be permitted to be associated with more than one Member Organization.<sup>30</sup> In accordance with proposed Rule 908(c)(ii), each holder of a permit will be obliged, however, to designate only a single eligible organization with which the Member is associated as the Member's "primary affiliation" for the purposes of voting, as will be provided in Article III of the proposed By-laws. A Member will be allowed to qualify as a Member Organization only the entity the Member has designated as his or her primary affiliation. Accordingly, every Member shall have one primarily-affiliated Member Organization and may have more than one associated Member Organization.

Unlike the current Phlx regime, after Demutualization, individual Members will not directly be accorded voting rights. Rather, in regard to the election and removal of On-Floor Governors,

Member Organizations will be entitled to exercise voting rights in respect of the permits held by those Members who have designated the Member Organization as their primary affiliation. Specifically, pursuant to proposed Rule 921 and Section 12–8 of the proposed By-laws, each Member Organization will have to register with the Exchange and designate a single individual as its "Member Organization Representative." The concept of a Member Organization Representative is designed to facilitate the post-Demutualization voting process. Permit holders, or Members, themselves will not exercise any voting rights. Instead, voting rights associated with a permit will be exercised by the Member Organization with which the Member is primarily associated and, as noted above, will be exercised by the Member Organization's Member Organization Representative. The Member Organization Representative will be the only person who may exercise the voting rights in respect of the Member Organization in respect of matters on which Member Organizations may vote. Proposed Rule 921 will also provide that a Member Organization Representative will have to accept the designation by filling out a registration documentation required by the Exchange.

Pursuant to proposed Rules 921 and 972, with the exception of certain provisions in proposed Rule 921(c) retaining the existing concept of "inactive nominees" in order to alleviate hardships, failure to qualify a Member Organization Representative at any time will prevent a Member Organization from exercising any rights in connection with the Exchange, including the right to vote for designated On-Floor Governors as described below.

According to proposed Rule 924, Members<sup>31</sup> will be liable with respect to any fees, fines, dues, penalties or other amounts imposed by the Exchange in connection with such Member's permit or any activities conducted in connection with such permit, whether or not any such obligation was incurred on behalf of his account or on behalf of his Member Organization. In addition, proposed Rule 924 will provide that Member Organizations will be liable with respect to any fees, fines, dues, penalties or other amounts imposed by the Exchange in connection with such Member Organization and any Member associated with such Member Organization in connection with a

permit or any activities conducted in connection with such permit by such member on behalf or for the account of such Member Organization. Under proposed Rule 924(b), similar to the rule in effect today, Member Organizations will have the ability to allocate responsibilities among themselves regarding Members associated with more than one Member Organization, provided that any such arrangements have been provided to the Exchange in the form required by it at least 30 days prior to their desired effectiveness.

#### Security Requirement

According to proposed Rule 909, each Member Organization will have to provide and maintain security to the Exchange (or alternative compliance) for the payment of any claims owed to the Exchange, to SCCP, and to Members and/or other Member Organizations. Currently, Section 14–5 of the By-laws provides that the Exchange (through the Admissions Committee) may dispose of any Seat upon written notice if amounts owed to the Exchange exceed a certain threshold amount and have been outstanding for at least one year, which possibility will be eliminated in connection with the elimination of Seats in the Demutualization. Accordingly, the Exchange proposes the security requirement to protect itself in the case of non-payment of certain amounts owed. The proposed security requirement will consist of:

- (i) Excess net capital of at least the amount required by the Exchange, as will be published by the Exchange from time to time;<sup>32</sup>
- (ii) an acceptable guaranty by a clearing Member Organization that is acceptable to the Exchange; or
- (iii) a deposit with the Exchange in an amount not to exceed \$50,000.

The amount of the security for a Member Organization will remain the same regardless of the number of permits issued to affiliates of the Member Organization. If a Member Organization's registration is terminated and no Members remain associated with the Member Organization, the Exchange will be permitted to apply the proceeds of any remaining security to the payment of any amounts owed by or on behalf of the Member Organization to, or claimed by, the Exchange, to SCCP, and to other Member Organizations, and any balance of the security thereafter remaining will be returned to the Member Organization or, in the case of

<sup>31</sup> This rule also applies to FCO participants and participant organizations with respect to FCO participations.

<sup>32</sup> In accordance with the By-laws and Rules, the Member Organization will be subject to monthly reporting obligations to evidence the maintenance of that excess net capital requirement.

<sup>30</sup> See Rule 793.