

than those applicable to other persons such new class or series of permit so long as such permit holder will trade with such new class or series of permit such product in the same capacity as he had done with a Series A-1 Permit before such termination (but only if he had continuously traded such product in such capacity for at least one year prior to such termination). In addition, such holder of the terminated Series A-1 Permit will be required to apply for such new permit within 30 days of the later to occur of (i) the termination of the series of Series A-1 Permits or (ii) the initial issuance of the new class or series of permit.

Transfer of Permits

Section 12-1(b) of the proposed By-laws, as well as proposed Rule 908(h) will also provide that, unless the Board resolves otherwise, no permit may be sold, transferred (by operation of law or otherwise), leased or otherwise encumbered by any person to whom such permit is issued by the Exchange. However, proposed Rule 908(h) provides that the existing concept of "inactive nominees" will be retained to alleviate certain administrative hardships for Member Organizations, such that a permit can be transferred to and from an inactive nominee.

Disciplinary Actions and Appeal Process

Enforcement of any disciplinary action and appeals against the same will be conducted in the same manner as before the Demutualization.

Fees, Dues and Charges

Currently, the Board of Phlx has the authority to set fees, dues and other charges³⁴ in its sole discretion, subject to the requirements under the Act, including filing requirements. Pursuant to lease agreements, Members who lease Seats from Owners are ordinarily required to make lease payments in respect of the lease.

After the Demutualization, the Board of the Phlx will continue to have the authority to set Member fees, dues and other charges in its sole discretion in accordance with Section 14-1 of the proposed By-laws. However, seat leases and lease payments (other than with respect to FCO participations) will no longer exist. All other Exchange charges in effect at the time of the Demutualization will continue to apply

until changed.³⁵ Of course, all fees are subject to change, both before and after Demutualization, subject to approval by the Board and filing with the Commission.

In connection with the Demutualization, the Exchange proposes to make certain corresponding changes to the defined terms applicable to its By-laws and Rules. These changes, reflected in Section 1-1 of the existing and the proposed By-laws, as well as in Rules 1 through 21 of the existing Rules and 1 through 22 of the proposed Rules, are generally³⁶ designed to adapt such defined terms to the proposed post-Demutualization structure of the Exchange, as described herein.

ii. Summary of Non-Demutualization-Related Changes

Certain aspects of the Proposed Rule Change are not directly related to the Plan of Demutualization. These changes are principally of a clean-up nature, intended to delete obsolete provisions that relate mainly to membership, in the interest of clarity and to avoid confusion post-Demutualization.

Definition of Member Firm, Member Corporation and Member Organization

The Exchange proposes to harmonize the use of the defined terms Member Firm, Member Corporation and Member Organization throughout its By-laws and Rules by eliminating the separate defined terms "Member Firm" (Rule 3 of the existing Rules) and "Member Corporation" (Rule 4 of the existing Rules) and amending the defined term "Member Organization" (Rule 6 of the existing Rules and Rule 3 of the proposed Rules) to include any Member Firm and Member Corporation, as they were previously defined. Wherever such defined terms appear in either the By-laws or the Rules, the Exchange proposes to make the corresponding change to Member Organization. The Exchange believes that these changes eliminate certain definitional inconsistencies.

Convertible Memberships

The Exchange proposes to delete the parts of Article XII of the existing By-laws that relate to "convertible memberships" on the Exchange, together with any references to any classes of memberships that existed in

connection with the Exchange's pre-1975 status as an unincorporated entity. No such convertible membership has been outstanding at any time and any transitional rules relating to the Exchange's previous unincorporated status are obviously no longer required.

Commissions

The Exchange proposes to delete Article XIX of the existing By-laws in its entirety, which relates to certain requirements for fixed rates of commissions for transactions effected on or by the use of the facilities of the Exchange. The Exchange believes these provisions do not comport with Section 6(e) of the Act.³⁷ To avoid confusion, they should, therefore, be deleted without replacement. The Exchange also proposes to delete the related Rule 248.

Market-Maker Membership

The Exchange proposes to delete Article XXIII of the existing By-laws, relating to Market-Maker Memberships, in its entirety. No such Market-Maker Membership has been issued since the 1970s and none is currently outstanding. Following the Demutualization, the Exchange is not initially proposing to create a specific permit for market-makers; any rights and privileges required to engage in market making on the Exchange will initially be granted through the proposed Series A-1 Permit. The Exchange also proposes to delete the related Rules 456-459. These deletions are intended to avoid confusion with respect to these unused membership-related provisions.

Exchange Options Trading

The Exchange proposes to delete Article XXVI of the existing By-laws, relating to Exchange options trading through a classification of membership named "Options Membership" in its entirety. No such Options Membership has at any time been issued and outstanding. Following the Demutualization, the Exchange is not initially proposing to create a specific permit to trade options on the Exchange; any rights and privileges required to engage in trading options on the Exchange will initially be granted through the proposed Series A-1 Permit. Accordingly, this deletion is also intended to avoid confusion.

References to the Exchange's Constitution

The Exchange proposes to delete references to the "Constitution of the Exchange" from the Rules 111, 201A

³⁴ According to the Exchange, the existing and proposed By-laws and Rules may refer to "dues, fees and other charges" to cover various types of monies owed to the Exchange, however, no substantive difference is intended.

³⁵ Separately, with the elimination of Seats and leases thereof, the Exchange intends to file a proposed rule change to adopt fees applicable to Series A-1 Permits and to make conforming changes to its fee schedule as a result of the Demutualization.

³⁶ See the discussion of the changes to the definitions of Member Organization, Member Firm and Member Corporation below.

³⁷ 15 U.S.C. 78f(e).