

[Release No. 34-35410; File No. SR-PSE-95-04]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to Earlier Listing of Options on Securities Issued by Companies in Certain Corporate Restructuring Transactions**

February 22, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 15, 1995, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On February 21, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change in order to make certain technical corrections to the text of the proposal.<sup>1</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its rules to permit the earlier listing of options on securities issued by companies in connection with certain corporate restructuring transactions. The text of the proposed rule change is available at the Office of the Secretary, PSE, 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 self-regulatory organization 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 text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>1</sup> See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Beth A. Stekler, Attorney, Division of Market Regulation, SEC, dated February 17, 1995 ("Amendment No. 1").

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

**1. Purpose**

The Exchange proposes to amend its rules to permit the earlier listing of options on securities issued by companies in connection with certain corporate restructuring transactions ("New Securities"). Currently, certain of the Exchange's rule preclude the listing of options on any security until that security has been actively traded at or above a specific price level for a certain period of time. For example, under PSE Rule 3.6(a)(3), trading volume in an underlying security must be at least 2,400,000 shares during the preceding twelve months (the "Volume Test"). Further, under PSE Rule 3.6(a)(4), the market price for an underlying security must be at least \$7.50 for the majority of business days during the three calendar month period preceding the date the security is selected as an underlying security (the "Price Test").

The proposed rule change would facilitate the earlier listing of options on New Securities by permitting the Exchange to determine whether a New Security satisfies the Volume Test and Price Test by reference to the trading volume and market price history of an outstanding equity security (the "Original Security") previously issued by the issuer of the New Security (or an affiliate thereof). Specifically, if (a) the aggregate market value, assets or revenue attributable to a New Security is at least a stated percentage of the same measure attributable to the Original Security and if a stated minimum value of assets or revenues represented by the New Security, as applicable, is satisfied or (b) the aggregate market value of the New Security is not less than \$500 million,<sup>2</sup>

<sup>2</sup> The proposed rule change would apply to a New Security if at least one of the following conditions is met:

(1) Any one or more of (A) the aggregate market value of the New Security, (B) the aggregate book value of the assets attributed to the business represented by the New Security, or (C) the revenues attributed to the business represented by the New Security are at least 25% of the same measure determined with respect to the Original Security or the business represented by the Original Security, as applicable, calculated in a comparable manner on a basis that reflects the *inclusion* of the business represented by the New Security, provided that in the case of the qualification of a New Security under clause (B), the aggregate book value of the assets attributed to the business represented by the New Security is not less than \$50 million, and in the case of the qualification of a New Security under clause (C), the revenues to the business represented by the New Security are not less than \$50 million;

then the Exchange would be permitted to determine whether a New Security satisfied the Volume Test and Price Test by reference to the trading volume and market price history of the Original Security. Reference may be made to the trading volume and market price history of the Original Security only for trading days occurring prior to the ex-date for the transaction in which the New Security is issued<sup>3</sup> and prior to any trading day for which these tests are determined to be satisfied by reference to the trading volume and market price history of the New Security. If reference is made to either the trading volume or market price history of the Original Security for this purpose for any period of time, then reference must be made to both such criteria in respect of the Original Security for that period.

In addition, if the New Security is to be listed on an exchange or in an automatic quotation system that has an initial listing requirement equivalent to the requirement of PSE Rule 3.6(a)(2) (number of shareholders must be at least 2,000), that requirement would be deemed to be satisfied. Finally, if at least 40 million shares of a New Security will be outstanding in a restructuring, the Exchange may assume that the New Security will satisfy the listing criteria of both PSE Rule 3.6(a)(1) (sufficient public float) and PSE Rule 3.6(a)(2). Before relying on either of the assumptions described above, the Exchange must make a reasonable investigation as to the number of shareholders and public float of the New Security and must not have determined that the requirements of PSE Rules 3.6(a)(1) and 3.6(a)(2) will, in fact, not be satisfied.

(2) Any one or more of (A) the aggregate market value of the New Security, (B) the aggregate book value of the assets attributed to the business represented by the New Security, or (C) the revenues attributed to the business represented by the New Security are at least 33 1/3% of the same measure determined with respect to the Original Security or the business represented by the Original Security, as applicable, calculated in a comparable manner on a basis that reflects the *exclusion* of the business represented by the New Security, provided that in the case of the qualification of a New Security under clause (B), the aggregate book value of the assets attributed to the business represented by the New Security is not less than \$50 million, and in the case of the qualification of a New Security under clause (C), the revenues attributed to the business represented by the New Security are not less than \$50 million; or

(3) The aggregate market value represented by the New Security is at least five hundred million dollars (\$500,000,000).

<sup>3</sup> Under the proposed rule change, options contracts may not initially be listed for trading in respect of a New Security until such time as shares of the New Security are issued and outstanding and are the subject of trading that is not on a "when issued" basis or in any other way contingent on the issuance or distribution of the shares.

The proposed rule change also would revise one of the Exchange's guidelines relating to the withdrawal of approval of underlying securities. Currently, under PSE Rule 3.7, Commentaries .01.2 and .01.3, an underlying security will not be deemed to satisfy the Exchange's listing criteria if the trading volume of the underlying security in all markets was less than 1,800,000 shares in the preceding twelve months (the "Maintenance Volume Test") or if the market price of the underlying security closed below \$5 on a majority of business days during the preceding six months (the "Market Price Test"). Because New Securities have limited trading history, they may be unable to satisfy the Maintenance Volume Test or the Market Price Test at the time options on such securities are first listed for trading on the Exchange. Accordingly, the proposed rule change would add a new Commentary .01.4 to PSE Rule 3.7 to provide that the Exchange may determine whether a New Security satisfies the Maintenance Volume and Market Price Tests set forth in Commentaries .01.2 and .01.3 of Rule 3.7, as well as the comparable tests set forth in Rule 3.7, Commentary .04, by reference to the trading volume and price history of the Original Security prior to commencement of trading in the New Security, including "when issued" trading.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, by removing impediments to a free and open market in options covering securities issued by companies engaged in corporate restructuring transactions.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer

period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-95-04 and should be submitted by March 22, 1995.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-4932 Filed 2-28-95; 8:45 am]

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[Release No. 34-35409; File No. SR-Phlx-95-12]

February 22, 1995.

## **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Adoption of Listing Standards Applicable to Options on Securities Issued in Certain Corporate Restructuring Transactions**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on February 13, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed

rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On February 21, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change in order to make certain technical corrections to the text of the proposal.<sup>1</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx, pursuant to Rule 19b-4 of the Act, proposes to amend Exchange Rule 1009 in order to adopt listing standards applicable to options on securities issued in certain corporate restructuring transactions.<sup>2</sup> The text of the proposed rule change is available 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 self-regulatory organization 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 text of these statements may be examined at the places specified in Items IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### 1. Purpose

The Phlx proposes to amend Exchange Rule 1009 in order to permit the earlier listing of options on securities issued by companies in connection with certain corporate restructuring transactions ("New securities"). Currently, certain of the Exchange's rules preclude the listing of options on any security until that security has been actively traded at or above a specific price level for a certain period of time. For example, under Exchange Rule 1009, Commentary

<sup>1</sup> See letter from Michell R. Weisbaum, Associate General Counsel, Phlx, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated February 21, 1995 ("Amendment No. 1").

<sup>2</sup> This filing withdraws and replaces File No. SR-Phlx-94-43. See letter from Michelle R. Weisbaum, Associate General Counsel, Phlx, to Michael A. Walinskas, Branch Chief, Division of Market Regulation, SEC, dated February 17, 1995.