

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

Margaret H. McFarland,

Deputy Secretary.

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Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Listing Criteria for Equity Linked Notes ("ELNs")

March 13, 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 March 8, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 proposes to amend Exchange Rule 803 to adopt listing standards for equity linked notes ("ELNs"). The text of the proposed rule change is available at the Office of the Secretary, the Phlx, 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 Phlx included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (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

The purpose of the proposed rule change is to add subsection (h) to Exchange Rule 803 to permit the Exchange to list and trade ELNs. ELNs are intermediate-term, hybrid securities,

whose value is based in whole or in part, to the performance of a highly capitalized, actively traded U.S. common stock, non-convertible preferred stock, or foreign security that is traded in the U.S. in the form of sponsored American Depositary Receipts ("ADRs"), ordinary shares, or otherwise.¹ ELNs may pay periodic interest or may be issued as zero-coupon instruments with no payments to holders prior to maturity. ELNs may be subject to a "cap" on the maximum principal amount to be repaid to holders upon maturity, and they may feature a "floor" on the minimum principal amount paid to holders upon maturity. A specific issue of ELNs, for example, may provide holders with a fixed semi-annual interest payment, while capping the maximum amount to be repaid upon maturity at 135% of the issuance price, with no minimum floor guarantee on the principal to be repaid at maturity. Another issue of ELNs might offer lower semi-annual payments based upon a floating interest rate² with a minimum floor for the repayment of principal of 75% of the issuance price. ELNs will be treated as equity instruments for, among other purposes, margin requirements. According to the Phlx, the flexibility available to an issuer of ELNs permits the creation of securities which offer issuers and investors the opportunity to more precisely focus on a specific investment strategy.

There are four components to the proposed listing standards for ELNs: (1) ELN issuer standards; (2) ELN offering standards; (3) underlying linked security standards; and (4) limitations on the size of ELN offerings.

1. Issuer Listing Standards

The issuer must be listed on or be an affiliate of a company listed on a national securities exchange or the Nasdaq National Market. Each issuer must also have a minimum tangible net worth of \$150 million. Finally, the market value of an ELN offering, when combined with the market value of all other ELN offerings previously completed by the issuer and traded on a national securities exchange or through Nasdaq may not be greater than 25% of the issuer's tangible net worth at the time of issuance.

¹ The Phlx will notify the Commission if an issue of ELNs is structured so that it is convertible prior to maturity and will submit a rule filing pursuant to Section 19(b) of the Act prior to listing ELNs with such terms if the Commission so requires.

² The Phlx will notify the Commission if an issue of ELNs provides for periodic interest payments to holders based on a floating rate and will submit a rule filing pursuant to Section 19(b) of the Act prior to listing ELNs with such terms if the Commission so requires.

2. Offering Standards

In order to ensure adequate liquidity in the markets for ELNs, each issuance of an ELN must have: (1) A minimum public distribution of one million ELNs; (2) a minimum of 400 holders of the ELNs, unless the ELNs are traded in \$1,000 denominations, in which case there is no minimum number of holders required; (3) a minimum market value of \$4 million; and (4) a term to maturity of two to seven years (although ELNs linked to a non-U.S. security (including a sponsored ADR) can not have a term longer than three years).

3. Underlying Linked Security Standards

In order to help ensure that ELNs will not have a disruptive effect on the market for the underlying securities, the linked securities must have sufficiently large market capitalizations and high trading volumes. Specifically, an underlying security must have: (1) A minimum market capitalization of \$3 billion and trading volume in the United States of at least 2.5 million shares in the 12-month period preceding the listing of the ELN; (2) a minimum market capitalization of \$1.5 billion and trading volume in the United States of at least 20 million shares in the 12-month period preceding the listing of the ELN; or (3) a minimum market capitalization of \$500 million and trading volume in the United States of at least 80 million shares in the 12-month period preceding the listing of the ELN. In addition, if an issuer proposes to issue ELNs on a security that does not meet the market capitalization and trading volume standards set forth above, the Phlx, with the concurrence of the staff of the Commission, may evaluate the trading volume, public float, and market capitalization of that security, as well as other relevant factors, and determine on a case-by-case basis that it is appropriate to list ELNs overlying that security. The Phlx will submit a rule filing pursuant to Section 19(b) of the Act if so required by the Commission if significant regulatory concerns are raised by a proposed ELN offering that does not meet the above market capitalization and trading volume standards.³

The issuer of the linked security must be a reporting company under the Act and the underlying linked security must be traded on a national securities exchange or through Nasdaq and be

³ In this connection, the Commission notes that any proposal to list an ELN linked to a security with a market capitalization of less than \$500 million would raise significant regulatory concerns for which a Section 19(b) rule filing would be required.

subject to last sale reporting pursuant to Rule 11Aa3-1 under the Act. Additionally, ELNs can be linked to certain non-U.S. companies⁴ subject to reporting requirements under the Act whose securities are traded in the U.S. either as ordinary shares or sponsored ADRs, provided there are at least 2,000 holders of the underlying linked security. For ELNs linked to non-U.S. securities (including sponsored ADRs) either: (1) The Exchange must also have in place a comprehensive surveillance agreement with the primary exchange in the home country where the security underlying the ELN is primarily traded (or in the case of sponsored ADRs, on the primary exchange where the security underlying the ADR is traded); or (2) the combined trading volume of the underlying security and other related securities occurring in the U.S. market represents (on a share equivalent basis) at least 50% of the combined worldwide trading volume in the underlying security, other related securities, and other classes of common stock related to the underlying security over the six month period preceding the date of listing of the ELN. The U.S. market includes trading only on the U.S. self-regulatory organizations included in the Intermarket Surveillance Group⁵ and linked through the Intermarket Trading System.⁶

⁴ A non-U.S. company is any company formed or incorporated outside of the United States.

⁵ ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG, (and accordingly, of the U.S. market) are: the American Stock Exchange, Inc. ("Amex"); the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc. ("CBOE"); the Chicago Stock Exchange, Inc.; the Cincinnati Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. ("NASD"); the New York Stock Exchange, Inc. ("NYSE"); the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

⁶ ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. The system links the participant markets and provides facilities and procedures for: (1) the display of composite quotation information at each participant market, so that brokers are able to determine readily the best bid and offer available

4. Limitations of Size of Particular ELN Offerings

Without the concurrence of the staff of the Commission, the issuance of ELNs relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. Further, without the concurrence of the staff of the Commission, the issuance of ELNs relating to any non-U.S. security (including sponsored ADRs) that is traded in the U.S. and is issued by a non-U.S. company subject to U.S. reporting requirements may not exceed: (1) 2% of the total shares outstanding worldwide provided at least 30% of the worldwide trading volume in the underlying security occurs in the U.S. market during the six month period preceding the date of listing of the ELN; (2) 3% of the total shares outstanding worldwide provided at least 50% of the worldwide trading volume in the underlying security occurs in the U.S. market during the six month period preceding the date of listing of the ELN; or (3) 5% of the total shares outstanding worldwide provided at least 70% of the worldwide trading volume in the underlying security occurs in the U.S. market during the six month period preceding the date of listing of the ELN. An ELN may not be linked to a non-U.S. security (including a sponsored ADR) where such security and all related securities had less than 30% of the worldwide trading volume occur in the U.S. during the six month period preceding the date of listing of the ELN. The Exchange may determine, on a case-by-case basis and with the concurrence of the staff of the Commission, to approve for listing ELNs that relate to more than these allowable percentages.⁷

Finally, because ELNs are linked to price movements in another security, the Exchange proposes three additional safeguards that are designed to satisfy the investor protection concerns raised by the trading of ELNs. First, for each ELN issue, the Exchange will distribute

from any participant for multiply trading securities; (2) efficient routing of orders and sending administrative messages (on the functioning of the system) to all participating markets; (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets; and (4) routing orders from a participating market to a participating market with a better price.

⁷ As with the market capitalization and trading volume requirements, the Commission notes that based on the proposed facts, the Phlx may be required to submit a rule filing to the Commission pursuant to Section 19(b) of the Act to address regulatory issues raised by any Phlx proposal to list ELNs related to more than the allowable percentages of outstanding shares of the underlying security.

a circular to its membership⁸ providing guidance concerning member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in ELNs. Second, members will have a duty of due diligence pursuant to Exchange Rule 746 to learn the essential facts relating to every customer trading ELNs prior to their first ELN transaction. Third, pursuant to Exchange Rule 747, a member must approve a customer's account for trading ELNs prior to the completion of the customer's first ELN transaction.

The Phlx represents that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)⁹ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Specifically, the Phlx believes the proposal strikes an appropriate balance between the Phlx's need to adapt and respond to innovations in the securities markets and the Phlx's concomitant need to ensure the protection of investors and the maintenance of fair and orderly markets. The Phlx believes the proposed numerical, quantitative listing standards should ensure that only substantial companies capable of meeting their contingent obligations created by ELNs are able to list such products on the Exchange. Similarly, by providing for the distribution of circulars to the membership concerning member firm compliance responsibilities and requirements, the Phlx believes the proposal addresses any potential sales practice concerns that may arise in connection with ELNs. The Phlx also believes that the trading of ELNs will provide investors with important investment and hedging benefits that will serve to satisfy better their investment and portfolio management needs.

(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.

⁸ The Commission notes that the circular must be in a form approved by the Commission.

⁹ 15 U.S.C. 78f(b)(5) (1988).

(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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from February 22, 1995, it has become effective pursuant to Section 19(b) (3) (A) of the Act and Rule 19b-4 (e) (6) thereunder. The proposed ELN listing standards are virtually identical to the listing standards for equity linked notes previously approved by the Commission for NYSE,¹⁰ the Amex,¹¹ the CBOE,¹² and the NASD.¹³ Accordingly, because the Commission has already approved similar rules for other exchanges, the Phlx believes that summary effectiveness of the proposed rule change will not significantly affect the protection of investors or the public interest and will not impose any significant burden on competition.¹⁴ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

¹⁰ See Securities Exchange Act Release Nos. 33468 (January 13, 1994), 59 FR 3387 (January 21, 1994) (order originally approving the listing of ELNs on the NYSE); 33841 (March 31, 1994), 59 FR 16671 (April 7, 1994) (order approving revised market capitalization and trading volume requirements for the listing of ELNs on the NYSE); 34545 (August 18, 1994), 59 FR 43877 (August 25, 1994) (order approving the listing of ELNs on the NYSE linked to securities issued by non-U.S. companies).

¹¹ See Securities Exchange Act Release Nos. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (order originally approving the listing of ELNs on the Amex); 33328 (December 13, 1993), 58 FR 66041 (December 17, 1993) (order approving revised market capitalization and trading volume requirements for the listing of ELNs on the Amex); 34549 (August 18, 1994), 59 FR 43873 (August 25, 1994) (order approving the listing of ELNs on the Amex linked to securities issued by non-U.S. companies).

¹² See Securities Exchange Act Release No. 34759 (September 30, 1994), 59 FR 50939 (October 6, 1994).

¹³ See Securities Exchange Act Release No. 34758 (September 30, 1994), 59 FR 50943 (October 6, 1994).

¹⁴ The Commission notes that prior to listing any ELNs, the Exchange will be required to obtain approval from the staff of the Commission concerning the Exchange's surveillance procedures applicable to the trading ELNs.

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 NW., 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 NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-95-09 and should be submitted by April 11, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Johathan G. Katz,

Secretary.

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Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Conversion Industries, Inc., Common Stock, No Par Value) File No. 1-10249

March 15, 1995

Conversion Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

¹⁵ 17 CFR 200.30-3 (a)(12) (1994).

According to the Company, the Company received a letter dated October 11, 1994, from the Exchange stating that it was considering delisting the Security because it believed that the Company had violated the Exchange's listing agreement and disclosure policies. The Company responded to the letter in writing to the Exchange dated November 3, 1994. In addition, the Company attended on November 3, 1994, a conference at the Exchange in which it made an extensive oral submission for the Exchange's consideration. Thereafter, the Company submitted voluminous documents in response to requests by the Exchange.

According to the Company, on November 23, 1994, the Company received a letter from the Exchange stating that the Exchange had made a determination to delist the Security.

Although the Company initially elected to appeal the Exchange's decision to delist the Security to the Exchange's Board of Governors, the Company has decided to settle matters by removing the Security from the Exchange. The Company believes that due to the impasses between the Exchange and the Company and the anticipated large expenditures of money and management time which would be required before a final resolution of the matters at issue could be obtained, it is in the best interest of the Company and its shareholders that matters be settled by delisting the Security from the Exchange.

The Exchange has also agreed that it would be in the best interest of the Exchange and the investing public to resolve this issue between the Company and the Exchange in this manner.

Any interested person may, on or before April 6, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

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

Jonathan G. Katz,

Secretary.

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