

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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-2002-68 and should be submitted by December 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46789; File No. SR-Phlx-2002-71]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 and Amendment No. 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Maintenance Listing Criteria for Underlying Securities in Phlx Rule 1010 and Original Listing Criteria for Underlying Securities in Phlx Rule 1009

November 7, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 31, 2002, 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 and II below, which Items have been prepared by the Phlx. On November 5, 2002, Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On November 6, 2002, Phlx

filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Phlx proposes to amend Commentaries .01 and .02 to Phlx Rule 1010 to allow the Exchange to list additional options series where the underlying security satisfies all of the maintenance listing requirements other than the underlying security trading at \$3.00 per share of the underlying security, the series the Exchange wants to list is traded on at least one other registered national securities exchange, and at the time the other exchange listed the series the underlying security was trading at \$3.00 or more.

The Exchange proposes to amend Commentary .01 to Phlx Rule 1009 to allow the Exchange to list an option on an underlying security that satisfies all of the initial listing requirements except the \$7.50 share price requirement,<sup>5</sup> as long as the option that the Exchange wants to list trades on another options exchange, meets continued listing guidelines, and during the three calendar months preceding the date of selection to originally list an option on the Exchange, the average daily trading volume for such options has been at least 5,000 contracts.

The Exchange also proposes to make non-substantive changes to Commentary .02 to Phlx Rule 1009 to indicate a change in the name of the department of the Exchange that will perform certain listing-related functions noted therein.

The text of the proposed rule change is below. Proposed new language is italicized; deleted language is in brackets.

Rule 1010. Withdrawal Of Approval Of Underlying Securities Rule 1010. No change.

Commentary:

related functions noted in Commentary .02 to Phlx Rule 1009. Specifically, the Exchange proposes to modify the language in Commentary .02 to Phlx Rule 1009 so that references to the Business and Operations Planning Department ("BOP") are changed to the Department of Securities ("DOS").

<sup>4</sup> See letter to Florence Harmon, Senior Special Counsel, Office of Market Supervision, Commission, from Jurij Trypupenko, Phlx, dated November 5, 2002 ("Amendment No. 2"). In Amendment No. 2, Phlx corrected a typographical error in Commentary .01 to Phlx Rule 1009 by changing "\$7½" to "\$7.50".

<sup>5</sup> Telephone call between Jennifer Lewis, Attorney, Division of Market Regulation, Commission, and Jurij Trypupenko, Phlx, on November 7, 2002.

.01 The Board of Governors has established guidelines to be considered by the Exchange in determining whether an underlying security previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Absent exceptional circumstances, with respect to items 1, 2, 3, or 4 listed below, an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever any of the following occur:

1. No change.
2. No change.
3. No change.

4. *Subject to Commentary .02 below, [T]the market price per share of the underlying security closed below \$3 on the previous trading day as measured by the highest closing price reported in the primary market in which the underlying security traded.*

5. No change.
6. No change.
7. No change.

.02 In connection with paragraph 4 of Commentary .01 above, the Exchange shall not open for trading any additional series of option contracts of the class covering an underlying security at any time when the market price per share of such underlying security is less than \$3 in the primary market in which it is traded *unless the additional series is traded on at least one other registered national securities exchange and at the time the additional series was listed by such other registered national securities exchange it met the \$3 market price requirement.* Subject to paragraph 4 of Commentary .01 above, the Exchange may open for trading additional series of option contracts of a class covering an underlying security when the market price per share of such underlying security is at or above \$3 at the time such additional series are authorized for trading. For purposes of this Commentary .02, the market price of such underlying security is measured by (i) for intra-day series additions, the last reported trade in the primary market in which the underlying security traded at the time the Exchange determines to add these additional series intra-day, and (ii) for next-day and expiration series additions, the closing price reported in the primary market in which the underlying security is traded on the last trading day before the series are added.

Commentary .03 to .10 No change.

Rule 1009. Criteria for Underlying Securities

- Rule 1009. (a) No change.
- (b) No change.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 7 CFR 240.19b-4.

<sup>3</sup> See letter to Florence Harmon, Senior Special Counsel, Office of Market Supervision, Commission, from Jurij Trypupenko, Phlx, dated November 1, 2002 ("Amendment No. 1"). In Amendment No. 1, Phlx clarified that another purpose of the proposal was to allow the Exchange to reflect a change in the name of the department of the Exchange that will perform certain listing-

(c) No change.

Commentary:

.01 The Board of Governors has established guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. Absent exceptional circumstances with respect to items 1, 2, 3, or 4 listed below, at the time the Exchange selects an underlying security for Exchange options transactions, the following guidelines with respect to the issuer shall be met:

1. No change.
2. No change.
3. No change.

4. *Either (i) [T]he market price per share of the underlying security has been at least \$7.50 during the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days or (ii)(a) the underlying security meets the guidelines for continued listing in Rule 1010; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been at least 5,000 contracts.*

.02 (a) Members, member organizations or any person proposing to list an option not currently listed on the Exchange shall submit a form of request (a "Request to List an Option"), available from the Exchange's [Business and Operations Planning Department (BOP), to BOP] *Department of Securities ("DOS")*, to DOS staff.

(b) As soon as practicable, but not later than three (3) business days following receipt of the Request to List an Option, [BOP] *DOS* staff shall review the proposed option's eligibility for listing, using the objective listing criteria set forth in Commentary .01 of this Rule. If [BOP] *DOS* staff determines that the proposed option does not meet the objective listing criteria set forth in Commentary .01 of this Rule, [BOP] *DOS* staff shall prepare a responsive form (a "Notification Memorandum") stating the reason(s) why the proposed option is not eligible for listing. [BOP] *DOS* staff shall forward the Notification Memorandum to the member or member organization that submitted the Request to List an Option within three (3) business days of its determination that the proposed option does not meet objective listing criteria. [BOP] *DOS* staff shall maintain all Requests to List an Option and Notification Memoranda in a central file for a period of not less than five (5) years.

(c) If [BOP] *DOS* staff determines that the proposed option meets the objective listing criteria set forth in Commentary .01 of this Rule, [BOP] *DOS* staff shall present the initial Request to List an Option and the subsequent review to the Chairman of the Board of Governors or his designee, who shall, within ten (10) business days of receipt of the Request to List an Option, instruct [BOP] *DOS* staff to:

(i) Solicit options specialists to submit applications for specialist privileges in the option; or

(ii) Within three (3) business days, prepare and forward a letter to the member or member organization that submitted the Request to List an Option, setting forth in reasonable detail the basis on which the decision not to list, or to place limitations or conditions upon, the proposed option was made.

(d) In considering underlying securities, the Exchange shall ordinarily rely on information made publicly available by the issuer and/or the markets in which the security is traded.

(e) In determining whether to list an option that otherwise meets objective listing criteria, the Chairman of the Board of Governors or his designee may consider such factors as the Exchange's current and projected computer capacity, and the current and projected demands for that capacity, including telecommunications and Option Price Reporting Authority ("OPRA") inbound and outbound message capacity or message volume restrictions placed on the Exchange by OPRA; the projected likely number of series and open interest in the option; the projected likely volatility of the option; the projected likely liquidity of the option; name recognition of the option or underlying security; the projected volume of trading in the option that is likely to occur on the Exchange; the projected share of total trading in the option that is likely to occur at the Exchange; whether any intellectual property right or license thereof exists with respect to the option; whether the proposal is consistent with Exchange rules and/or the Securities Exchange Act of 1934 and the rules, regulations, and orders thereunder; whether unusual or unfavorable market conditions exist with respect to the option; and whether it is in the bona fide business interest of the Exchange to list the option. If, in denying a request or approving a request subject to conditions or limitations, the Exchange relies upon a factor of other bona fide business interests, the Exchange shall, in addition to providing the member with a written response specifying that the Exchange has relied upon other bona fide business interests,

maintain a record of the bona fide business interests supporting its decision.

Commentary .03 to .07 No change.

## 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 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 III below. The Phlx 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 Exchange represents that the purpose of the proposed rule change is to ensure that the Exchange will not be at a competitive disadvantage by not being able to list additional option series or to originally list options that are listed on other exchanges. The Exchange notes that, although maintenance listing and original listing standards are generally similar among the options exchanges, several exchanges have recently adopted changes similar to those proposed by the Phlx.<sup>6</sup>

Specifically, the Exchange seeks to list additional options series where the underlying security satisfies all of the maintenance listing requirements other than the underlying security trading at \$3 per share of the underlying security,<sup>7</sup> the series the Exchange wants to list is traded on at least one other registered

<sup>6</sup> See maintenance listing filings at Securities Exchange Act Release Nos. 46375 (August 16, 2002), 67 FR 54628 (August 26, 2002) (SR-AMEX-2002-68); 46501 (September 16, 2002), 67 FR 59585 (SR-CBOE-2002-52); 46647 (October 11, 2002), 67 FR 64426 (October 18, 2002) (SR-ISE-2002-21); and 46406 (August 23, 2002), 67 FR 55446 (August 29, 2002) (SR-PCX-2002-51). See also original listing filings at Securities Exchange Act Release Nos. 45505 (March 5, 2002), 67 FR 10941 (March 11, 2002) (SR-AMEX-2002-13); 45220 (December 31, 2001), 67 FR 760 (January 7, 2002) (SR-ISE-2001-33); and 46382 (August 20, 2002), 67 FR 55054 (August 27, 2002) (SR-PCX-2002-41).

<sup>7</sup> The maintenance requirements of Phlx Rule 1010, which will continue to be applied under the proposal, include: (a) the underlying security consists of a large number of outstanding shares by non-affiliates of the issuer, (b) there is a large number of holders of the underlying security, (c) the underlying security is actively traded, and (d) the underlying security continues to be listed on a national securities exchange or traded through the facilities of a national securities association.

national securities exchange, and the underlying security traded at least at \$3.00 when that exchange listed the series. The purpose is also to allow the Exchange to list an option where the underlying security satisfies all of the initial listing requirements except that the price of the underlying security is below \$7.50, as long as the option that the exchange wants to list trades on another options exchange, meets all continued listing guidelines, and during the three calendar months preceding the date of selection to originally list an option on the Exchange, the average daily trading volume for such options has been at least 5,000 contracts.

### *\$3.00 Maintenance Listing*

Currently, Commentary .01 to Phlx Rule 1010 provides the guidelines to be used in determining whether an underlying individual equity security, previously approved for options trading, meets the requirements for continued approval. In particular, Commentary .01 (4) of Rule 1010 provides that the Exchange may not list additional series for an options class if the market price per share of the underlying security closed below \$3.00 on the previous trading day as measured by the highest closing price reported on the primary market in which the underlying security traded.

The Exchange therefore proposes to amend Commentaries .01 and .02 to Phlx Rule 1010 to allow the Exchange to add additional series of options that satisfy all of the maintenance listing requirements other than the \$3.00 per share requirement, so long as such series are traded on at least one other registered national securities exchange, and at the time that the additional series were listed by such other exchange, the underlying security met the \$3.00 market price requirement. Without the proposed filing, the Exchange believes it would be at a significant competitive disadvantage if it could not list options series that are listed on other exchanges simply because the underlying security has fallen to a market price that is less than \$3.00 when the Exchange wanted to list such series.

The Exchange believes that once an options series is trading on another exchange and the series is therefore already available to the investing public, the \$3.00 market price threshold is not necessary and becomes an impediment to competition. The Exchange believes allowing the Exchange to list such series will increase competition for order flow and benefit investors.<sup>8</sup> Moreover, the

Exchange believes that the maintenance listing standards other than the \$3.00 market price would assure that options would be listed and traded on the securities of companies that should be financially sound.

### *\$7.50 Original Listing*

Currently, Commentary .01 to Phlx Rule 1009 sets forth the guidelines that must be used in order to determine whether the Exchange may originally list options covering underlying securities. In particular, Commentary .01(4) to Phlx Rule 1009 states that in order to list an equity option, the market price per share of the underlying security must be at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection (listing) of the option, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.

The Exchange therefore proposes to amend Commentary .01 to Phlx Rule 1009 to allow an alternative listing standard.<sup>9</sup> Specifically, the Exchange proposes to allow listing an option where the underlying security satisfies all of the initial listing requirements except that the price of the underlying security is below \$7.50, as long as the option that the Exchange wants to list:

- Trades on another options exchange,
- Meets the continued listing guidelines of Exchange Rule 1010, and
- During the three calendar months preceding the date of selection to originally list an option on the Exchange, the average daily trading volume for such options has been at least 5,000 contracts.

The Exchange believes that this proposal is narrowly drafted to address particularly those circumstances where an actively-traded option is currently ineligible for listing on the Phlx while at the same time, the option is trading on another options exchange. The Exchange believes that when one or more exchanges have listed and begun trading an option, allowing the Exchange to likewise list such option (regardless of the market price of the underlying security) will increase competition for order flow and benefit investors. Moreover, the Exchange believes that the proposal would not

series, and does not believe that it will be susceptible to manipulation.

<sup>9</sup> The Exchange will continue to be able to apply original listing criteria pursuant to Exchange Rule 1009 where the market price of the underlying security has been \$7.50 or higher for the requisite period of time and the other requirements of Commentary .01 to the rule are met.

introduce any additional options classes.

Phlx believes the proposed amendments to Phlx Rule 1010 and 1009 listing standards would enhance competition among the options exchanges and would enable the Exchange to remain competitive in the current volatile options market.

### *Change in Department Name*

Finally, the Phlx represents that the purpose of the proposal is also to allow the Exchange to make non-substantive changes to Commentary .02 to Phlx Rule 1009 for the sole purpose of reflecting a change in the name of the department of the Exchange that will perform certain listing-related functions noted in Commentary .02 to Phlx Rule 1009. In particular, the Exchange proposes to modify the language in Commentary .02 to Phlx Rule 1009 so that references to the Business and Operations Planning Department (“BOP”) are changed to the Department of Securities (“DOS”).

## **2. Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest in that it would allow the Exchange to list additional options series and allow original listings where such series or listings are already traded on another exchange and meet certain requirements, and thereby promote competition to the benefit of investors.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

## **III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> The Exchange represents that the proposal would not serve to introduce additional option

submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 in the Commission's Public Reference Room. 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-2002-71 and should be submitted by December 6, 2002.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b)(5) of the Act.<sup>12</sup>

The Commission believes investors benefit from the competition among options exchanges that results when options are listed on more than one options exchange; and that investors are sufficiently protected, even though, with respect to the portion of the proposal relating to the \$3.00 maintenance requirement, Phlx will be permitted to list a series of option contracts when the market price of the underlying security is below \$3, because the Exchange must comply with all of the other maintenance listing requirements, and the market price of the underlying security was at or above \$3 when the options series was listed on the first options exchange.<sup>13</sup> With respect to the portion of the proposal relating to the \$7.50 original listing requirement, Phlx will be permitted to list a series of options contracts when the market price of the underlying security is below \$7.50 for the majority of business days during the three calendar months preceding the date of selection, because the Exchange must comply with all of the other listing requirements in Phlx Rule 1009 other

than the \$7.50 per share requirement, and must meet the guidelines for continued approval under Phlx Rule 1010. The Commission believes that these requirements should help to ensure that options traded on the Phlx are based on securities of companies that are financially sound and subject to adequate minimum standards. Therefore, the Commission finds that the proposed rule change, as amended, will promote just and equitable principles of trade, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.<sup>14</sup>

The Phlx has requested that the proposed rule change, as amended, be given accelerated approval pursuant to Section 19(b)(2) of the Act.<sup>15</sup> The Commission believes accelerated approval of the proposal would enhance competition among the options exchanges. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>16</sup> to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-Phlx-2002-71), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**BILLING CODE 8010-01-P**

## SOCIAL SECURITY ADMINISTRATION

### Statement of Organization, Functions and Delegations of Authority

This statement amends Part T of the Statement of Organization, Functions and Delegations of Authority that covers the Social Security Administration (SSA). Chapter TA covers the Deputy Commissioner for Disability and Income Security Programs. Notice is hereby given that Chapter TA, which covers the Office of the Deputy Commissioner, Disability and Income Security

<sup>14</sup> 15 U.S.C. 78f(b)(5). In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 17 CFR 240.30-3(a)(12).

Programs, is being amended to reflect a reorganization. Notice is given that the following Subchapters are being deleted:

Subchapter TAE, The Office of Disability

Subchapter TAS, The Office of Program Support

Notice is further given that the following Subchapters are being established:

Subchapter TA, The Office of Disability Determinations

Subchapter TA, The Office of Disability Programs

Subchapter TA, The Office of Program Development and Research

Also, Subchapter (TAP), "The Office of Program Benefits" is being retitled as "The Office of Income Security Programs." In addition, Subchapter (TAP), The Office of Program Benefits and Subchapter (TAT), the Office of Employment Support Programs are being amended to reflect the realignment and redistribution of functions resulting from the abolishment of the Office of Disability and the Office of Program Support and the establishment of the Office of Program Development and Research. The Office of Hearings and Appeals and the Office of International Programs are excluded from this reorganization. The new material and changes are as follows:

#### Section TA.00 The Office of the Deputy Commissioner, Disability and Income Security Programs—(Mission)

Add as the 4th sentence, line 10: "The Office manages SSA's disability and SSI policy and research agendas and long-term disability initiatives."

Delete the 10th sentence, line 21: "Oversees the collection, use and dissemination of both personal and non-personal information to ensure consistency with Agency objectives, law and the expectations of the American public."

#### Section TA.10 The Office of the Deputy Commissioner, Disability and Income Security Programs—(Organization)

Delete:

D. The Office of Disability (TAE).

H. The Office of Program Support (TAS).

Establish:

D. The Office of Disability Determinations ( ).

H. The Office of Disability Programs ( ).

J. The Office of Program Development and Research ( ).

Retitle:

<sup>12</sup> *Id.*

<sup>13</sup> The Commission notes that such series must have been properly listed by the original options exchange.