

including whether the proposed rule change is consistent with the Act. Persons making written 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 Exchange. All submissions should refer to file number SR-PHLX-00-08 and should be submitted by September 22, 2000.

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

The Commission has reviewed carefully the Exchange's proposed rule change, as amended, and finds, for the reasons set forth below, the proposal is consistent with the requirements of Section 6 of the Act<sup>7</sup> and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds the proposal, as amended, is consistent with Section 6(b)(5) of the Act<sup>8</sup> because the proposal is designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market. The Commission believes that the proposed rule change may help to facilitate a smooth transition from quoting in fractions to decimalization. Additionally, the Commission believes the proposal will benefit investors and the public interest by allowing the PHLX to continue to provide an opportunity for price improvement for equities that are quoted in decimals.

The Commission believes it is consistent with the protection of investors and the public interest and therefore finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The proposed rule change is designed to permit a smooth transition to decimal pricing, which is scheduled to begin in certain securities on August 28, 2000.

Accelerated approval would afford investors the benefits to be realized under this proposal without delay. In light of these factors, the Commission finds good cause to approve the proposed rule change on an accelerated basis.

The Commission also believes that it is consistent with the protection of investors and the public interest and therefore finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 1 requests that the proposed rule change be approved on a pilot basis through February 28, 2001. The Commission believes it is prudent and reasonable to allow the proposed rule change to be implemented on a pilot basis, so as to afford investors the benefits to be realized under this proposal without delay. In light of these factors, the Commission finds good cause to approve Amendment No. 1 on an accelerated basis.

For these reasons, and because the proposal is unlikely to raise new issues, the Commission deems it appropriate to approve the proposed rule change, as amended, on an accelerated basis. The Commission finds, therefore, that good cause exists, consistent with Section 19(b)<sup>9</sup> and Section 6(b)<sup>10</sup> of the Act, to grant accelerated approval of the proposed rule change, as amended.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-PHLX-00-08), as amended, is hereby approved on an accelerated basis through February 28, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43211; File No. SR-Phlx-00-02]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 by the Philadelphia Stock Exchange, Inc. Amending Its Certificate of Incorporation To Authorize the Issuance of Trading Permits

August 25, 2000.

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 January 12, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed amendments to the proposed rule change on May 30, 2000<sup>3</sup> and July 12, 2000.<sup>4</sup> The substance of these amendments has been incorporated into this filing. 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 Exchange proposes to amend its Certificate of Incorporation to add a new article authorizing the Board of Governors to issue trading permits. The text of the proposed new article is as follows:

TWENTY-FIRST: In addition to all other powers granted to the Board of Governors by law, this Certificate of Incorporation or otherwise, the Board of Governors shall have the power to issue permits to conduct business on the securities exchange provided by the Corporation, and to adopt by

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

<sup>2</sup> 17 CFR 240.19-4.

<sup>3</sup> Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division of Market Regulation ("Division"), Commission, dated May 25, 2000 ("Amendment No. 1"). Amendment No. 1 clarifies that the Exchange would be required to file a proposed rule change with the Commission to the extent required by Section 19(b) of the Act if it adopts by board resolution rules governing permits to conduct business on the Exchange. Amendment No. 1 also revises Section III.C. of the proposed rule change to include comments received from members on trading permits.

<sup>4</sup> Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division, Commission, dated July 11, 2000 ("Amendment No. 2"). Amendment No. 2 makes certain clarifying changes to the Exchange's summary of comments received from members, participants, and others set forth in Section II.C. of this filing.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b).

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

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

resolution or to set forth in the Rules of the Board of Governors such rules with respect to permits as the Board may from time to time determine to be advisable, including, without limitation, rules governing the terms and conditions of permits and the number thereof, the transferability or non-transferability of permits, the qualifications that must be met for a person or entity (whether a member or a non-member of the Corporation) to be issued a permit, and the dues and other charges to be paid to the Corporation in connection with such permits. The Board of Governors may authorize any committee thereof or the Chairman of the Board of Governors to exercise any powers of the Board of Governors with respect to permits.

## 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 IV below. The Phlx has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

The Exchange proposes to amend its Certificate of Incorporation by adding a new Article Twenty-First ("Article Twenty-First") that authorizes the Exchange's Board of Governors ("Board") to issue trading permits. Specifically, Article Twenty-First authorizes the Board to issue permits to conduct business on the Exchange, and to adopt rules or resolutions governing these permits.<sup>5</sup> Specifically, Article Twenty-First authorizes the Board to adopt rules governing, among other things, the terms, conditions, number, and transferability of permits, the qualifications that members and non-members must meet to be issued a permit, and the dues and other charges to be paid to the Exchange in connection with the permits. Article Twenty-First also permits the Board to authorize the Chairman of the Board or any Board committee to exercise any

powers of the Board with respect to the permits.

Article Twenty-First is intended to give the Board the flexibility to create a means, other than the purchase or lease of an Exchange membership, for qualified persons to acquire trading rights on the Exchange. The Exchange's Certificate of Incorporation provides that the purpose of the Exchange is to "act as and to provide a securities exchange where the [Exchange's] members and other persons authorized by it can [do business]"<sup>6</sup> Proposed Article Twenty-First makes clear that such "other persons" authorized to do business at the Exchange include holders of trading permits authorized by the Board.

#### 2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of section 6(b)(5)<sup>8</sup> in particular, in that it is designed 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. The proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers or dealers and will permit the Board to provide greater access to the Exchange through trading permits that do not require a lease of a membership or a significant initial investment of capital to purchase a membership.

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

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition. By lowering the cost of access to the Exchange, the proposed rule change is intended to permit increased participation in the market and therefore promote competition.

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

Although written comments were not solicited regarding Article Twenty-First, the Exchange issued a circular dated September 27, 1999, which announced

certain action taken at the September 22, 1999 Phlx Board meeting, including the approval of changes to the Certificate of Incorporation authorizing trading permits. That circular invited telephone comments to be made to the Chairman.<sup>9</sup> The Exchange also issued a circular dated October 28, 1999, announcing Board approval of Rule 23 governing the terms and conditions of proposed equity trading permits ("ETPs").

The Exchange received 17 written comments concerning the concept of trading permits generally and equity trading permits in particular, including one undated petition received on November 12, 1999, from 19 owners and members.<sup>10</sup> A number of comments were critical of the proposal without stating the basis of the criticism.<sup>11</sup> The principal substantive comments are discussed below.<sup>12</sup>

The majority of the commenters were seat owners predicting, and objecting to, a decline in seat prices and dilution in the value of memberships as a result of

<sup>9</sup> One individual addressed the topic of permits at the Board's September 22, 1999 meeting, and thereafter provided those comments to the Exchange in written form at the Exchange's request.

<sup>10</sup> Letter dated October 4, 1999 from Isabelle Benton ("Benton Letter"); Letter dated October 16, 1999 from Mark F. Desiderio, to the Commission ("Desiderio Letter"); Letter dated October 4, 1999 from Doris D. Elwell to Chairman Arthur Levitt, Commission ("Elwell Letter"); Letter dated October 28, 1999 from Harry Green ("First Green Letter"); Letter dated November 3, 1999 from Harry Green ("Second Green Letter"); Letter dated October 1, 1999 from Karen D. Janney ("Janney Letter"); E-mail dated July 8, 1999 from William J. Kramer ("First Kramer E-mail"); E-mail dated October 6, 1999 from William J. Kramer ("Second Kramer E-mail"); E-mail dated August 17, 1999 from Robert Leff ("First Leff E-mail"); E-mail dated December 16, 1999, from Robert Leff ("Second Leff E-mail"); Letter dated September 23, 1999 from PBL Partners, LLC ("PBL Letter"); Letter dated September 28, 1999 from George E. Snyder III ("Synder Letter"); Undated petition received on November 12, 1999, from George E. Snyder III and 18 other owners and members ("Petition"); Letter dated July 20, 1999 from Stephen J. Taylor Jr. ("Taylor Letter"); E-mail dated August 24, 1999 from Steve Taylor ("Taylor E-mail"); Letter dated July 22, 1999 from Matthew D. Wayne, Esq. ("Wayne Letter"); and Letter dated September 23, 1999, enclosing an outline of remarks delivered by Matthew D. Wayne on behalf of Paul Liang at the September 22, 1999 Phlx Board of Governors meeting ("Liang Letter"). A number of these written comments dealt generally with both trading permits and the Exchange's proposed capital funding fee and were filed with the Commission on October 27, 1999 in connection with SR-Phlx-99-43, the Exchange's original proposed rule change regarding the capital funding fee. See Securities Exchange Act Release No. 42405 (Feb. 8, 2000), 65 FR 8226 (Feb. 17, 2000). The Commission granted permanent approval to the capital funding fee on June 29, 2000. See Securities Exchange Act Release No. 42993 (June 29, 2000), 65 FR 42415 (July 10, 2000).

<sup>11</sup> See e.g. PBL Letter (stating without elaboration that issuing ETPs is flawed on both business and legal grounds).

<sup>12</sup> See *supra*, note 3.

<sup>5</sup> The Exchange acknowledges that any such action undertaken pursuant to Board resolution and not proposed to be set forth in the rules of the Exchange would nonetheless be filed with the Commission to the extent required pursuant to Section 19(b) of the Act and Commission rules thereunder.

<sup>6</sup> Phlx Certificate of Incorporation, Article Third (emphasis added). The Exchange notes that the Commission has previously approved the issuance by the Exchange of foreign currency options participations ("FCO Participations") pursuant to which both Exchange members and non-members may trade foreign currency options on the Exchange. See Securities Exchange Act Release No. 19134 (Oct. 14, 1982), 47 FR 46949 (Oct. 21, 1982).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

the issuance of permits.<sup>13</sup> Certain commenters predicted lawsuits against the Exchange if ETPs were issued,<sup>14</sup> and one commenter stated that a campaign to hurt one lessor in particular has “blinded” people.<sup>15</sup> Another commenter suggested that if they are issued, ETPs should be “phased in.”<sup>16</sup> The Exchange has determined in its business judgment, however, that the potential benefits to the Exchange of the trading permits, including the potential for increased access and enhanced competition on the trading floor and the opportunity to attract additional order flow and new business, justify any possible dilution of memberships and may, in the longer term, result in higher prices for regular memberships. The Exchange is also of the view that the benefits of the ETP program to the Exchange are such that a phasing-in approach would not be desirable. The Exchange further believes that it is proceeding appropriately with respect to ETPs and that any lawsuit of the kind alluded to by certain commenters would be groundless. The Exchange believes that ETPs are in the best interests of the Exchange and its membership as a whole (including both lessee members and lessor owners), and notes that the Exchange’s stated purpose in Article Third of its Certificate of Incorporation is “[t]o act as and to provide a securities exchange where [its] members and other persons authorized by it” can deal in securities.

The Petition submitted by George E. Synder III demanded that any proposed rules regarding the issuance of trading permits be put to a vote of owner-members. One comment letter stated that seat owners should be eligible to vote on all issues that come before the membership,<sup>17</sup> and another stated that creation of ETPs requires a membership vote.<sup>18</sup> However, neither the Certificate of Incorporation nor the By-laws require a vote to be taken by either seat owners or members on the subject of issuance of trading permits. Further, practically all voting rights are vested in “members”<sup>19</sup> rather than seat owners under Phlx’s Certificate of Incorporation and By-laws.<sup>20</sup>

One commenter stated that the Exchange’s Certificate of Incorporation and By-laws do not permit the creation of ETPs, and that creation of ETPs requires a By-law amendment.<sup>21</sup> The Exchange believes that the Certificate of Incorporation already permits ETPs, and that a By-law amendment is therefore not required.<sup>22</sup> The Exchange notes that the amendment to the Certificate of Incorporation proposed in Article Twenty-First would clearly authorize permits in any event and would supersede any inconsistent provision in the By-laws as a matter of basic corporate law.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer 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 Exchange consents, the Commission will:

(A) By order approve such 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, including whether the proposed rule change is consistent with the Act. Persons making written 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-00-02 and should be submitted by September 22, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43212; File No. SR-Phlx-00-03]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 by the Philadelphia Stock Exchange, Inc. Relating to the Issuance of Equity Trading Permits

August 25, 2000.

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 January 12, 2000, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed amendments to the proposed rule change on May 30, 2000<sup>3</sup> and July 12, 2000.<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 Exchange proposes to amend its rules to provide for the issuance of

<sup>23</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> On May 30, 2000, the Exchange submitted a new Form 19b-4, which replaces and supersedes the original filing in its entirety (“Amendment No. 1”).

<sup>4</sup> See Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division of Market Regulation, Commission, dated July 11, 2000 (“Amendment No. 2”). Amendment No. 2 makes certain clarifying changes to the Exchange’s summary of comments received from members, participants, and others set forth in Section II.C. of this notice. The substance of Amendment No. 2 has been incorporated into this filing.

<sup>13</sup> See Benton Letter, Elwell Letter, First and Second Green Letters, Janney Letter, Synder Letter dated July 20, 1999, Taylor Letter, Wayne Letter, and First and Second Leff E-mails.

<sup>14</sup> See Benton Letter, Wayne Letter, and First Kramer E-mail.

<sup>15</sup> See Second Kramer E-mail.

<sup>16</sup> See Taylor Letter and Taylor E-mail.

<sup>17</sup> See Second Green Letter.

<sup>18</sup> See Liang Letter.

<sup>19</sup> In this instance, the term “member” refers to the holder of legal title of the seat.

<sup>20</sup> See Article Thirteenth of the Exchange’s Certificate of Incorporation and Phlx By-law Article

XII, Section 12-6. Seat owners (*i.e.*, holders of “equitable” title to an Exchange membership) are entitled to vote in any decision relating to a compromise or arrangement between the Phlx and its creditors or its members, or relating to a reorganization of the Phlx. Other voting rights belong to the members (*i.e.*, holders of legal title to an Exchange membership).

<sup>21</sup> See Liang Letter.

<sup>22</sup> As noted above, the Exchange’s stated purpose in Article Third of its Certificate of Incorporation is “[t]o act as and to provide a securities exchange where [its] members and other persons authorized by it” can deal in securities. Phlx’s Foreign Currency Options Participants, for example, have traded on the Exchange since the early 1980’s.