

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-48313; File No. SR-Phlx-2003-49)

August 8, 2003

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Member Voting

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 11, 2003, 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 its Certificate of Incorporation, Article Fifth (e) as well as Exchange By-Law Article III, Sections 3-7(a), 3-10(c), and 3-13; Article XII, Section 12-1(b); and Article XXII, Sections 22-1 and 22-2, to provide that for each matter submitted to a vote of the membership,³ except as provided by Article Thirteenth of the Certificate of Incorporation, each regular member shall be entitled to one vote for each regular membership, the legal title⁴ of which is registered in the name of such regular member. The text of the proposed rule change is below. Additions are italicized; deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ For instance, members vote for industry governors. See Phlx By-Law Article 3-2.

⁴ Legal title is registered in the name of a member pursuant to a lease agreement or under an A-B-C agreement (membership title and use agreement) pursuant to Phlx Rules 930 and 940.

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**CERTIFICATE OF INCORPORATION OF PHILADELPHIA STOCK
EXCHANGE**

FIRST – FOURTH: No change.

FIFTH (a)–(d): No change

(e) Except as otherwise provided in Article Thirteenth hereof, on each matter submitted to a vote of the membership, each Regular Member shall be entitled to one vote for each Regular Membership the legal title of which is registered in the name of such Regular Member.

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BY-LAWS OF PHILADELPHIA STOCK EXCHANGE

ARTICLE III

Nominations-Annual Election-Meetings

SEC.3-1–3-6: No change.

Members May File Independent Nominations-Requirements

SEC. 3-7. (a) Independent nominations for the positions of On-Floor, and Off-Floor Governors on the Board of Governors may be made by a written petition filed with the Secretary of the Exchange in a sealed envelope within two (2) weeks after the posting of the report of the Nominating and Elections Committee. No such nomination shall be valid unless it is signed by [not less than fifty (50)] members holding legal title to not less than fifty (50) regular memberships. No member shall endorse more than one (1) nominee; provided, however, that [seventy-five (75)] members holding legal title to seventy-five (75) regular memberships may, by petition, propose an entire ticket, or any portion thereof, for the vacancies on the Board of Governors to be filled at the ensuing election. A person is not eligible for an independent

nomination for a position on the Board of Governors if one (1) or more persons associated with his member or participant organization, as defined in By-Law Section 3-6(c), would be serving an unexpired term or terms on the Board upon the commencement of his term of office. No more than one (1) person associated with the same member or participant organization, as defined in Section 3-6(c), shall be certified by the Nominating and Elections Committee for independent nomination to a position on the Board of Governors. In the event more than one such nomination is received, the Nominating and Elections Committee shall not certify any such candidates. A person who has previously accepted nomination by the Nominating and Elections Committee for one (1) category of Governor (e.g. On-Floor or Off-Floor Governor) is not eligible to qualify as an independent candidate in any category. There may be no independent nominations of incumbent Governors whose terms do not expire following the next election. The Nominating and Elections Committee and the Secretary of the Exchange shall open such envelopes, and if found eligible for election, the persons nominated by petition conforming with the foregoing provisions shall be deemed nominees for such positions on the Board of Governors. The names of all nominees for membership on the Board of Governors, whose nominations conform with By-Law requirements, shall be sent to all members of the Exchange by the Secretary as promptly after the third Monday of February as is reasonably possible. The order of nominees' names on notices and on the ballot shall be determined through a drawing by lot conducted by the Nominating and Elections Committee.

SEC. 3-7 (b)-(c): No change.

SEC. 3-8 – 3-9: No change.

Special Meetings

SEC. 3-10. Except as otherwise specifically provided by law, special meetings of the members may be called at any time:

- (a) By the Chairman of the Board of Governors; or
- (b) By a majority of the Board of Governors; or
- (c) By members holding legal title to a majority of all regular memberships entitled to vote.

Upon the written request of any person entitled to call a special meeting, which request shall set forth the purpose for which the meeting is desired, it shall be the duty of the Secretary to give prompt written notice of such meeting to be held at such time as the Secretary may fix, subject to the provisions of Section 3-11 hereof. If the Secretary shall fail to fix such date and give such notice within ten (10) days after receipt of such request, the person or persons making such request may do so.

SEC. 3-11: No change.

SEC. 3-12: No change

Quorum

SEC. 3-13. At all meetings of the Exchange for the transaction of business other than dealings in securities, each member may vote in person or by proxy[; provided that no action shall become effective unless the number of members participating therein exceeds one-half of the number of voting memberships outstanding and any proposed action is approved]. At any such meeting of the Exchange, the members holding legal title to a majority of the regular memberships entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be required by law, and

all matters shall be determined by a majority of the votes cast. The members present at a duly organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. If a meeting cannot be organized because of the absence of a quorum, those present may, except as otherwise provided by law, adjourn the meeting to such time and place as they may determine. In the case of any meeting for the election of Governors, those members who attend the second of such adjourned meetings, although less than a quorum as fixed in this Section, shall nevertheless constitute a quorum for the purpose of electing Governors.

ARTICLE XII

Membership-Eligibility-Election-Initiation-Fee Membership

Membership

SEC. 12-1.

(a): No Change

(b) A regular membership confers upon and subjects the holder to all the privileges and obligations of active membership. Only regular members shall be entitled to vote and to conduct business on the exchange facility conducted by the Exchange. Except as otherwise provided in Article Thirteenth of the Certificate of Incorporation of the Exchange, on each matter submitted to a vote of the membership, [E]each regular member shall be entitled to one vote [on] for each [matter submitted to a vote of the membership] regular membership the legal title of which is registered in the name of such regular member.

SEC. 12-1 (c)-(f): No change.

SEC 12-2-12-11: No change.

ARTICLE XXII

Amending The By-Laws

Amendments to By-Laws

SEC. 22-1. Whenever [seventy-five] members holding legal title to seventy-five regular memberships [of the Exchange] shall offer, in writing, any amendment to the By-Laws, it shall be submitted to the Secretary of the Exchange, who shall submit it to the membership for vote thereon by ballot. The vote shall be conducted within four weeks of the date of such submission. The record date for determining members entitle to vote on such amendment shall be set as the date of the submission. Each member of the Exchange in good standing may vote in person or by proxy. If [the number of] members holding legal title to a majority of the regular memberships entitled to vote thereon participate[ing] in the balloting [exceeds one-half of the number of memberships then outstanding] and the proposed amendment is approved by the affirmative vote of a majority of the votes cast, it shall thereupon become a part of the By-Laws.

How Proposed

SEC. 22-2. Any amendment to the By-Laws originating in the Board of Governors shall be proposed at a regular or special meeting of the Board. If approved by twelve of the Governors, it shall be announced to the members of the Exchange forthwith by sending copies thereof to each member of the Exchange.

Special meeting

If, within a period of ten days, a written request of members holding legal title to not less than seventeen regular memberships of the Exchange is filed with the Secretary for a special meeting of the Exchange to consider the amendment, the Chairman of the Board shall call such meeting,

at which meeting each member of the Exchange in good standing may vote in person or by proxy. If [the number of] members holding legal title to a majority of the regular memberships entitled to vote thereon participate[ing] in the balloting [exceeds one-half of the number of memberships then outstanding,] and the proposed amendment is approved by the affirmative vote of a majority of the votes cast, it shall thereupon become a part of the By-Laws.

Method of adoption

In the absence of such request for a special meeting of the Exchange, the Board of Governors, after the expiration of such period of ten days, may consider the proposed amendment at any regular or special meeting of the Board, and, if the proposed amendment is adopted by a vote of fifteen members of the Board, it shall thereupon become a part of the By-Laws.

All changes in the By-Laws shall be printed and posted for ten days, and copies thereof shall be sent to each member of the Exchange.

SEC. 22-3: No change.

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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 Exchange 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 purpose of the proposed rule change is to make the voting process more fair by entitling each member to cast one vote for each regular membership to which he or she holds legal title. The result of the proposed amendments would be that any one member would be entitled to cast multiple votes if he or she held legal title to more than one regular membership. Today, a regular member is permitted to cast only one vote, regardless of the number of memberships to which he or she holds legal title. This is due to the current language in the By-Laws and the Certificate of Incorporation, as well as the applicable provisions of the Delaware General Corporate Law.

The Exchange believes that the proposed amendment to Article Fifth of the Exchange's Certificate of Incorporation would better enfranchise all legal titleholders with respect to each regular membership to which they hold legal title, thereby allowing them the opportunity to participate fully in Exchange governance with respect to each such regular membership. The Exchange believes that this is a desirable result as the Exchange will allow all legal titleholders to cast ballots and/or give proxies⁵ for each and every membership. Additionally, the amendments would allow titleholders to sign multiple times representing each regular membership they hold legal title to with respect to independent nominations for industry governors, to be counted for quorum purposes, to be counted for purposes of calling a special membership meeting, and to be counted for purposes of offering any amendment to the By-Laws

⁵ Exchange By-Law Article III, Section 3-12 (Right to Vote) provides as follows: Each regular member of the Exchange in good standing shall be entitled to vote at any election of the Exchange. Each such member may vote in person or by proxy under such

or requesting the calling of a special meeting of the membership to vote on a proposed By-Law amendment. Finally, the Exchange believes that these amendments would allow all legal titleholders to participate fully in Exchange governance opportunities whereas under current interpretation of the By-Laws legal titleholders with multiple legal titles to regular memberships registered in their name are allowed only one vote.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(3) of the Act⁷ in particular, in that the rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs by providing for legal titleholders that own more than one regular membership to participate more fully in Exchange governance.

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

The Exchange does not believe that the proposed rule change would 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. 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

regulations as the Nominating and Elections Committee, with the approval of the Board of Governors, may direct.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(3).

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 number SR-Phlx-2003-49 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).