

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54237; File No. SR-Phlx-2006-39)

July 28, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Conforming Changes to its By-Laws

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 July 21, 2006, 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 Phlx. The Phlx has designated this proposal as one concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(3) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 various provisions of its By-Laws (“By-Laws”) to conform the usage of terms contained in, and to make technical corrections to, the By-Laws. The text of the proposed rule change is set forth below, with underlining indicating new text and [brackets] indicating deletions.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(3).

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## ARTICLE IV Board of Governors

## Number and Composition

SEC. 4-1. The management of the business and affairs of the Exchange shall be vested in the Board of Governors. The Board of Governors shall be composed of the Chairman of the Board of Governors, who shall be the individual then holding the office of the Chief Executive Officer of the Exchange and twenty-two (22) other Governors consisting of: two (2) Governors who are Member Governors who meet the qualifications set forth in By-Law Article [1] I, Section 1-1 with respect to Member Governors; one (1) Governor who is a PBOT Governor who meets the qualifications set forth in By-Law Article [1] I, Section 1-1 with respect to the PBOT Governor; six (6) Governors who are Stockholder Governors who meet the qualifications set forth in By-Law Article [1] I, Section 1-1 with respect to Stockholder Governors; twelve (12) Governors who are Independent Governors who meet the qualifications set forth in By-Law Article [1] I, Section 1-1 with respect to Independent Governors and one (1) Governor who is the Vice-Chairman of the Board of Governors who meets the qualifications set forth in By-Law Article V, Section 5-2 with respect to the Vice-Chairman.

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## Duties and Powers

SEC. 4-4. (a) – The Board of Governors shall be vested with all the powers necessary for the management of the business and affairs of the Exchange, the regulation of the business conduct of Members, participants, Member Organizations, and participant organizations, and persons associated with such organizations and for the promotion of the welfare, objects and purposes of the Exchange, and in addition to the power and authority conferred by these By-Laws, may

exercise all powers of the Exchange and do all such lawful acts and things as are not by statute, these By-Laws or the Certificate of Incorporation directed or required to be exercised or done by the Stockholders.

[Amendment.

August 22, 1997 (97-31).]

[(a)] In the exercise of its powers it may adopt such rules, issue such orders and directions and make such decisions as it may deem appropriate.

SEC.4.4 (b) No Change

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#### Vacancies

SEC. 4-7. Vacancies in the Board of Governors, including vacancies resulting from [from] the resignation of any Governors or an increase in the number of Governors, shall be filled by the Nominating, [and] Elections and Governance Committee, subject to approval by a majority of the Governors then in office, although less than a quorum, or by a sole remaining Governor, and each person so elected shall be a Governor until his successor is elected and qualified or until his earlier resignation or removal.

#### Disqualification of Governors

SEC. 4-8. (a) – (b) - No change.

(c) The last sentence of subsection (a) of this Section shall not apply when the interest of the relevant person is derived solely from being part of the general membership or of a class of [m]Members, unless their impartiality might reasonably be questioned.

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## ARTICLE X Standing Committees

## Standing Committees

SEC. 10-1 (a) The Standing Committees of the Exchange shall consist of: an Executive Committee, an Admissions Committee, an Allocation, Evaluation and Securities Committee, an Audit Committee, an Automation Committee, a Business Conduct Committee, a Compensation Committee, a Finance Committee, a Floor Procedure Committee, a Foreign Currency Options Committee, a Marketing Committee, a Nominating, [and] Elections and Governance Committee, a Quality of Markets Committee, and an Options Committee. Each of such Committees shall be composed of not more than nine (9) members, including ex-officio members, except for the Floor Procedure Committee, the Options Committee, and the Foreign Currency Options Committee, which shall each consist of not more than twelve (12) members, including ex-officio members. The Chairman of each Standing Committee shall be a member of the Board of Governors and at least one other person on each Committee shall be a Governor.

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## Vacancies in Standing Committees --Ad Interim Appointments

SEC. 10-4. The Executive Committee shall appoint, subject to the approval of the Board of Governors, a person to fill any vacancy other than Chairman occurring in any Standing Committee except the Nominating, [and] Elections and Governance Committee and the Executive Committee. Should special exigencies require, the Chairman of the Board of Governors may fill any such vacancy ad interim until the next regular meeting of the Board of Governors.

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## Nominating, Elections and Governance Committee

SEC. 10-19. (a) - (h) – No change.

(i) The names of the persons nominated by the Nominating, [and] Elections and Governance Committee shall be identified on the ballot by an appropriate legend or symbol. In the event that there are more nominations of persons [in the categories of On-Floor and Off-Floor Governor] than there are vacancies on the Board of Governors which may be filled by such persons, the number of such persons who may be elected to serve on the Board of Governors in each category shall also be indicated on the ballot.

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## ARTICLE XI Appeals

## When Allowed

SEC. 11-1. (a) - No change.

(b) Notwithstanding the foregoing, any appeal from a decision of the Nominating, [and] Elections and Governance Committee regarding the eligibility of any candidate for election to the Board of Governors shall be heard by a special committee of the Board of Governors composed of not less than a majority of all Governors who are not then candidates for office on the Board of Governors. An affected candidate or interested party may appeal by filing a written notice thereof with the Secretary of the Exchange within seven (7) days after a decision. Said notice shall also state the reasons for his appeal and the relief requested. He may appear before the special committee and present arguments concerning the decision. An appropriate record shall be kept. The decision of the special committee shall be final.

(c) - No change.

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## ARTICLE XV Transfer of Foreign Currency Options Participations

## Transfer of Foreign Currency Options Participations

## Transfer of Equitable Title

A transfer of equitable title only to a foreign currency options participation shall be made upon submission of the name of the transferor and the transferee thereof to the Admissions Committee. A transfer may not be effected pursuant to a lease agreement. Notice of this transfer shall be posted upon the website of the Exchange and shall also appear in the Weekly Bulletin mailed to the [m]Members and/or foreign currency options participants at least seven (7) days in advance of the transfer's effective date. Notice of the proposed transfer shall specify the date on which the proposed transfer will become effective.

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## Contracts of Transferor

SEC. 15-2.

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## Effect of Involuntary Transfers

Notice of a transfer to be made pursuant to a sale of a foreign currency options participation by the Admissions Committee shall be sent to the [m]Members and the foreign currency options participants as in the case of a voluntary transfer, and shall have the same effect in respect to open contracts and unmatured debts and obligations of the foreign currency options participant or former foreign currency options participant as in the case of a voluntary transfer.

## Disposition of Proceeds of Sale of Foreign Currency Options Participation

SEC. 15-3.

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## Determination of Claims

An Advisory Committee of (3) Governors, of whom at least two (2) shall be Independent Governors, shall be appointed by the Chairman of the Board of Governors to examine the validity of claims asserted against the [m]Members or the foreign currency options participants and give an advisory opinion to the Board of Governors thereon. The examination of the validity of the claims shall be made upon written submission of claimants and respondents with provision for these parties to request oral argument before the Advisory Committee. The Board of Governors, based upon the written record before the Advisory Committee, shall determine the payment of such sums that are or may become due to the claimants pursuant to these By-Laws and the rules of the Exchange. The decision of the Board of Governors shall be in writing and sent to the parties to the proceeding respecting the determination of claims.

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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 proposal. 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 Exchange represents that the purpose of the proposed rule change is to make minor, technical adjustments to certain By-Laws, in order to conform them to the current By-Laws as amended recently by SR-Phlx-2005-93.<sup>5</sup> The Exchange represents that the proposed amendments are administrative in nature and are only intended to add consistency to the rules in terms of form.

The term "member" is being capitalized in certain places to clarify the intended meaning of the term. The Exchange represents that the purpose of this amendment is not to change the intent of its meaning within the By-Laws, but rather to clarify the intended meaning by capitalizing the term in relevant places. The capitalization should differentiate between intended references to the term "Member" as defined in Phlx Rule 2<sup>6</sup> from the term "member" as used in other contexts.<sup>7</sup> The Exchange represents that this amendment does not intend to substantively amend the By-Laws, but only to correct inadvertent omissions in the previously referenced filing.

The term "Governance" was previously added to the title of the Nominating and Elections Committee in the previously referenced filing.<sup>8</sup> The failure to include the term

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<sup>5</sup> See Securities Exchange Act Release No. 53734 (April 27, 2006), 71 FR 26589 (May 5, 2006).

<sup>6</sup> Phlx Rule 2 states, "The term "Member" means a permit holder which has not been terminated in accordance with the by-laws and these rules of the Exchange."

<sup>7</sup> For example, the By-Laws use the term "member" to refer to members of a committee. The Exchange represents that the proposed rule change would not amend references to the term "member" in the Exchange's Certificate of Incorporation.

<sup>8</sup> See Securities Exchange Act Release No. 53734, supra note 5.



“Governance”, when referencing this Committee in certain places, was an inadvertent omission in the previously referenced filing. The proposed amendments will provide consistency throughout the By-Laws when referring to this Committee.

The Exchange proposes to remove the references to “Off-Floor Governor” and “On-Floor Governor” as these terms no longer have a defined meaning in the By-Laws. The terms “Off-Floor Governor” and “On-Floor Governor” were removed from the By-Laws by a previous rule filing.<sup>9</sup> The Exchange represents that the remaining references to these terms in the specified By-Laws was an inadvertent oversight. The removal of these terms should provide clarity to the existing language in these By-Laws.

## 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, in that it is designed to promote just and equitable principles of trade, 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, by maintaining consistency in the terms referenced throughout the By-Laws and the intended usage of defined terms.

### 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>9</sup> See id.

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

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

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act,<sup>12</sup> and paragraph (f)(3) of Rule 19b-4 thereunder<sup>13</sup> because the Phlx has designated it as being concerned solely with the administration of the Exchange. 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 interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>14</sup>

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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2006-39 on the subject line.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(3).

<sup>14</sup> See 15 U.S.C. 78s(b)(3)(C).

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2006-39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available

publicly. All submissions should refer to File Number SR-Phlx-2006-39 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris  
Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).