

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53496; File No. SR-Phlx-2005-62)

March 16, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amending Exchange Delisting Rules to Conform to Recent Amendments to Commission Rules Regarding Removal from Listing and Withdrawal from Registration.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 25, 2006, 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 Phlx. On January 4, 2006, Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</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 Phlx Rules 809 (Issuer Request for Removal and Delisting of Securities), 810 (Suspension and Delisting Policies Based on Exchange Findings), and 811 (Delisting Policies and Procedures) in view of the recent adoption by

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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> In Amendment No. 1, Phlx amended its rule text and the purpose section of the Exchange's Form 19b-4 to clarify the effective date of the proposed rule change and revised Phlx Rule 809 to state that an issuer proposing to withdraw a security from listing on the Exchange must provide a copy of Form 25 to the Exchange upon filing with the Commission.

the Commission of amendments to its rules<sup>4</sup> that would streamline the procedure for removing from listing, and withdrawing from registration, securities under Section 12(b) of the Act.<sup>5</sup> The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in [brackets].

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**Rule 809.**

**Issuer Request for Removal and Delisting of Securities**

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*The following will be the operative text of Rule 809 effective as of April 24, 2006:*

An issuer proposing to withdraw a security from listing on the Exchange shall submit the following:

A certified copy of a resolution adopted by the Board of Directors of the issuer authorizing withdrawal from listing and registration and a statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof.

The issuer may be required to submit the proposed withdrawal to the security holders for their vote at a meeting for which proxies are solicited provided the stock is not also listed on another Exchange having similar requirements.

An issuer proposing to withdraw a security from listing on the Exchange shall do so by electronically submitting to the Securities and Exchange Commission Form 25 via the EDGAR system in compliance with all of the requirements of Rule 12d2-2(c) under the Exchange Act, and shall simultaneously provide a copy of such Form 25 to the Exchange.

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<sup>4</sup> See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005) (the “Delisting Release”). Changes to Commission rules under the Act pursuant to the Delisting Release will not be operative until April 24, 2006.

<sup>5</sup> 15 U.S.C. 78s(b)(1).

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**Rule 810.**

**Suspension and Delisting Policies Based on Exchange Findings**

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*The following will be the operative text of Rule 810 effective as of April 24, 2006:*

(a) through (c) -- *No Change.*

Commentary:

.01 An application by the Exchange to strike a security from listing and/or registration will be submitted to the Securities and Exchange Commission electronically on Form 25 via the EDGAR system, and a copy of the application on Form 25 will be promptly delivered to the issuer.

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**Rule 811**

**Delisting Policies and Procedures**

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*The following will be the operative text of Rule 811 effective as of April 24, 2006:*

(a) through (f) – *No Change.*

(g) At the conclusion of the hearing the Committee will present its findings to the Board of Governors so that a final determination can be made. Such decision shall be final. If the Committee or the Board determines that the security of the issuer should be removed from listing, an application shall be submitted by the Exchange to the Securities and Exchange Commission ("Commission") to strike the security from listing and registration and a copy of such application shall be furnished to the issuer in accordance with Section

12 of the Exchange Act and the rules promulgated thereunder. If the decision is that the security should not be removed from listing, the issuer will receive a notice to that effect from the Exchange.

An application by the Exchange to strike a security from listing and / or registration will be submitted to the Commission electronically on Form 25 via the EDGAR system, and a copy of the application on Form 25 will be promptly delivered to the issuer.

The actions required to be taken by the Exchange and issuers to strike a security from listing and / or registration [for routine reason, such as redemption, maturity and retirement, is] are set forth in Rule 12d2-2[(a)] and Rule 19d-1 promulgated under the Exchange Act.

The relevant portions of [the] Section 12 of the Exchange Act and Rules promulgated thereunder pertaining to the suspension, removal or withdrawal of registration / and or listing of securities [for all other reasons], and the timing thereof are summarized below:

- (1) [SEC authorization for w]Withdrawal of registration and / or striking for certain corporate events from listing of Exchange listed security –Section 12(d) of the Exchange Act and Rule 12d2-d(a) thereunder;
- (2) suspension of trading by Exchange-Rule 12d2-1 under the Exchange Act;
- (3) application of Exchange to strike security from listing and or / registration and notice provisions – Rule 12d2-2 (a) and (b) [(c) and (e)] under the Exchange Act;[ or]
- (4) application of issuer to withdraw from listing and registration and notice provisions – Rule 12d2-2[(d) and (e)]c under the Exchange Act[.];
- (5) timing and effectiveness of application by issuer or Exchange to strike a security from listing and / or registration – Rule 12d2-2(d) under the Exchange Act; or

(6) exemption of certain standardized options and futures products from Section 12(d) of the Act – Rule 12d2-2(e).

In appropriate circumstances, when the Exchange is considering delisting because a company no longer meets the requirements for continued listing, a company may[, with the consent of the Exchange,] file a delisting application electronically on Form 25 via the EDGAR system, and shall no fewer than ten days prior to filing Form 25 provide written notice to the Exchange, provided that it states in its application that it [is no longer eligible for continued listing on the Exchange] has complied with the rules of the Exchange and the requirements of Rule 12d2-2(c) under the Exchange Act governing the voluntary withdrawal of the class of securities from listing and registration on the Exchange.<sup>6</sup>

Pursuant to this rule, the Exchange will provide public notice of its final determination to remove a security from listing and/or registration by issuing a press release and posting a notice on its web site. Such notice will be disseminated no fewer than ten days before the delisting becomes effective pursuant to paragraph (d)(1) of Rule 12d2-2 under the Exchange Act, and will remain posted on the web site until the delisting is effective.

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<sup>6</sup> Phlx intends to amend its rule text to clarify that an issuer that is below the continued listing policies and standards of the Exchange and seeks to voluntarily apply to withdraw a class of securities from listing must disclose that it is no longer eligible for continued listing in its statement of material facts relating to the reason for withdrawal from listing, its public press release, and its Web site notice. Telephone conversation between Jurij Trypupenko, Director, Phlx, and Ronesha A. Butler, Special Counsel, Division of Market Regulation, Commission, on March 15, 2006.

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.

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 conform the Exchange's Rules 809, 810, and 811 to the Commission's recent actions regarding streamlining the procedures for removing from listing, and withdrawing from registration, securities under Section 12(d) of the Act.

On July 14, 2005, the Commission published the Delisting Release making changes to the Commission's rules governing removal from listing and registration and instituting electronic submission of Form 25.<sup>7</sup> In the Delisting Release, the Commission, among other things, adopted amendments to Rules 12d2-2 and 19d-1 under the Act and Form 25 thereunder,<sup>8</sup> to indicate that national securities exchanges and issuers that seek to delist and/or deregister securities under Section 12(d) of the Act will do so by

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<sup>7</sup> See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

<sup>8</sup> 17 CFR 240.12d2-2, 17 CFR 240.19d-1, and 17 CFR Part 249.25. The Exchange likewise adopted amendments to Rule 101 of Regulation S-T, 17 CFR 232.101.

electronically filing Form 25 via the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.<sup>9</sup>

Phlx Rule 811 (Delisting Policies and Procedures) currently establishes a procedure for the Exchange to delist a company that is below the Exchange's continued listing criteria (and not able to otherwise qualify under an initial listing standard), which includes an opportunity for a company to come into compliance, provision of notice of the Exchange staff's decision to delist, and opportunity for a company to appeal the decision to a committee designated by the Exchange's board of directors; and indicates that the Exchange will follow Section 12(d) of the Act and Commission Rule 12d2-2.

The Exchange proposes changes to Phlx Rule 811 to conform it to the Delisting Release. The proposed changes to Phlx Rule 811 include language modifications that: indicate that applications by the Exchange to strike a security from listing and/or registration will be submitted on Form 25 via EDGAR, and a copy will be promptly delivered to the issuer; add a reference to Commission Rule 19d-1 under the Act in terms of the Exchange and issuers following the procedures established in Commission Rule 19d-1 along with Commission Rule 12d2-2 under the Act; expand and modify references to Commission Rule 12d2-2 so that they are commensurate with the Delisting Release; and provide for public notice of the Exchange's final determination to remove a security from listing and/or registration by issuing a press release and posting a notice on its web site for the requisite period of time. The proposed changes to Phlx Rule 811 also relate to

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<sup>9</sup> To permit the EDGAR system to differentiate between a Form 25 filed by exchanges and by issuers, the Commission established that a Form 25 filed by exchanges would have the EDGAR submission type of 25-NSE and a Form 25 filed by issuers would have the EDGAR submission type of 25.

the exemption of certain standardized options and futures products from Section 12(d) of the Act.

Phlx Rule 810 (Suspension and Delisting Policies Based on Exchange Findings) currently provides that if an issuer cannot demonstrate proper listing compliance it will be subject to delisting procedures pursuant to Phlx Rule 811; and that if the entire outstanding amount of a class, issue or series is retired through payment at maturity or through redemption, reclassification or otherwise, the Exchange may give notice to the SEC on Form 25. The Exchange proposes a change to clarify that Form 25 will be electronically filed via EDGAR, in compliance with the Delisting Release.

Phlx Rule 809 (Issuer Request for Removal and Delisting of Securities) currently provides that if an issuer desires to withdraw a security from listing it must, among other things, provide a certified copy of a resolution adopted by the Board of Directors of the issuer authorizing withdrawal from listing and registration and a statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof. The Exchange proposes to clarify that for such requests an issuer shall use Form 25 electronically filed via Edgar in compliance with all of the requirements of Commission Rule 12d2-2(c) under the Act for such requests, in compliance with the Delisting Release.

The Exchange believes that the proposed changes conform its rules to the Delisting Release and streamline the process for delisting and/or deregistration.

## 2. Statutory Basis

The Exchange believes that its proposal, as amended, 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 to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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

The Phlx does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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 such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission will:

- (A) by order approve such rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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

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

#### IV. 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. 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-2005-62 on the subject line.

##### 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-2005-62. 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 the filing also will be available for inspection and copying at the principal office of 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-2005-62 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>12</sup>

Nancy M. Morris  
Secretary

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