

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

The PCX neither solicited nor received written comments on the proposed rule change.

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 self-regulatory organization 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 proposal 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 PCX. All submissions should refer to File No. PCX-2002-25 and should be submitted by May 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-11586 Filed 5-8-03; 8:45 am]

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⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47794; File No. SR-Phlx-2003-27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, by the Philadelphia Stock Exchange, Inc. Relating to the Amendment of Price Criteria for Certain Securities that Underlie Options Traded on the Exchange

May 5, 2003.

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 April 23, 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. On April 30, 2003, the Phlx filed Amendment No. 1 to the proposal.³ The proposed rule change, as amended, has been filed by Phlx as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.⁴ 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 Commentary .01 to Phlx Rule 1009 to allow the Exchange to list options series on covered securities, as defined under Section 18(b)(1)(A) of the Securities Act of 1933 ("Covered Securities"),⁵ where

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jurij Trypupenko, Counsel and Director of Litigation and Operations, Legal Department, Phlx to Terri Evans, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a technical correction by inserting rule text that had been inadvertently omitted in the original filing.

⁴ 17 CFR 240.19b-4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on April 30, 2003, the date Phlx filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

⁵ Section 18(b)(1)(A) of the Securities Act of 1933 (the "1933 Act") provides that "[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed or authorized for listing on the National Market

the closing market price of the underlying Covered Securities was at least \$3.00 per share for the five consecutive business days prior to the date that the Phlx submits an option class certification for listing and trading options to the Options Clearing Corporation ("OCC"). The listing criteria will remain the same for non-Covered Securities.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics* and proposed deletions are in [brackets.]

* * * * *

Rule 1009. Criteria for Underlying Securities

- (a) No change.
- (b) No change.
- (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) (i) *If the underlying security is a "covered security" as defined in Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least \$3.00 for the previous five (5) consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation for listing and trading. For purposes of this rule, the market price of such underlying security is measured by the closing price reported in the primary market in which the underlying security is traded.*

[Either (i)](ii) *If the underlying security is not a "covered security," the market price per share of the underlying security has been at least \$7.50 for 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*

System of the Nasdaq Stock Market (or any successor to such entities) * * *." 15 U.S.C. 77r(b)(1)(A). The term "Covered Security," for the operation of proposed Commentary .01 to Phlx Rule 1009, will not include those securities defined in Section 18(b)(1)(B) of the 1933 Act. 15 U.S.C. 77r(b)(1)(B).

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.

(5) No change.

.02 No change.

.03 No change.

.04 No change.

.05

(a) through (c) No change.

(d) In the case of a Restructured Transaction that satisfies either or both of the conditions of subparagraphs (a)(1) or (2) above in which shares of the restructure security are sold in a public offering or pursuant to a rights distribution: (i) the Exchange may assume the satisfaction of one or both of the requirements of paragraph (1) and (2) of Commentary .01 above on the date the restructure security is selected for options trading only if (A) the applicable conditions set forth in paragraph (c)(i) above are met with respect to whichever of these requirements is assumed to be satisfied, or (B) the condition set forth in paragraph (c)(ii) above is met, in either case subject to the limitations stated in said paragraph (c); (ii) the Exchange may certify that the market price of the restructure security satisfies the requirement of paragraph (4) of Commentary .01 above by relying on the market price history of the original security prior to the ex-date for the Restructure Transaction in the manner described in paragraph (a) above, but only if the restructure security has traded "regular way" on an exchange or automatic quotation system for at least five trading days immediately preceding the date of selection, and at the close of trading on each trading day preceding the date of selection, as well as at the opening of trading on the date of selection the market price of the restructure security was at least \$7.50 or, if the restructure security is a "covered security" as defined in paragraph (4) of Commentary .01 above, the market price of the restructure security was at least \$3.00; and (iii) the Exchange may certify that the trading volume of the restructure security satisfies the requirement of paragraph (3) of Commentary .01 above only if the trading volume in the restructure security has been at least 2,400,000 shares during a period of 12 months or less ending on the date the restructure security is selected for options trading.

.06 No change.

.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 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 amend the pricing requirement to initially list options overlying Covered Securities that have traded at a price of \$3.00 or higher for the five consecutive business days prior to the date that the Phlx submits an option class certification for listing and trading options to the OCC. The proposal would allow the Exchange to act competitively in listing options pursuant to a listing standard similar to one that has been adopted by other options exchanges.⁶

The Exchange is proposing to amend its pricing requirement for underlying securities in Commentary .01 to Phlx Rule 1009 to provide that, for underlying securities that are deemed to be Covered Securities, the closing market price of the underlying security must be at least \$3.00 per share for the five consecutive business days prior to the date on which Phlx submits an option issue certification to the OCC. The \$7.50 price per share requirement would continue to apply to underlying securities that are not Covered Securities. In particular, for non-Covered Securities, Commentary .01 to Phlx Rule 1009 would continue to require that the market price per share of any underlying security must be at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection of an option class, as measured by the lowest

⁶ See Securities Exchange Act Release Nos. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (SR-CBOE-2002-62); 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (SR-PCX-2003-06); 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (SR-ISE-2003-04); and 47613 (April 1, 2003), 68 FR 17120 (April 8, 2003) (SR-Amex-2003-19).

closing price reported in any market in which the underlying security traded on each of the subject days.⁷ When the \$7.50 price requirement was first implemented, the listed options market was in its infancy. Now, more than twenty-eight years after the Phlx first started trading listed options, the Exchange believes that the options market is a mature market with sophisticated investors. The Exchange does not believe that the \$7.50 initial listing criteria serves to accomplish its presumed intended purpose of preventing the proliferation of option issues on overlying securities that lack liquidity needed to maintain fair and orderly markets. Phlx now seeks to move away from the current approach to listing standards and allow the desires of its customers and the workings of the marketplace to determine the securities that underlie the option that the Exchange will list.

Due to recent trends in the securities markets, which include, among other things, a precipitous decline in the price of many securities, there has been a marked increase in the number of underlying securities that, but for the current pricing standard, would otherwise qualify for options listing on the Exchange. The Phlx states that changing the pricing standard to the proposed \$3.00 market price per share requirement would allow it to evaluate whether to list options on a greater number of classes without compromising investor protection. In doing so, the Exchange would endeavor to ensure that its own systems and those of the Options Price Reporting Authority have the capacity to handle the potential increased capacity requirements.

The Exchange notes that although this proposal amends the minimum closing market price for an underlying security which is deemed a Covered Security, as well as the time period for which it must trade at that price before its overlying option can be listed on the Exchange, the Phlx will otherwise continue to maintain its initial listing standards. The Exchange does not

⁷ In the alternative to the \$7.50 price requirement, an option on a non-Covered Security may meet the requirements provided in Commentary .01 to Phlx Rule 1009 when: (a) The underlying security meets the guidelines for continued listing in Phlx 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. Telephone conversation among Jurij Trypupenko, Counsel and Director of Litigation and Operations, Legal Department, Phlx, Terri Evans, Assistant Director, Division, Commission, and Tim Fox, Attorney, Division, Commission on April 28, 2003.

propose to amend any of the other criteria in Commentary .01 to Phlx Rule 1009, including the requirements that: there must be a minimum of 7,000,000 shares of the underlying security owned by public investors; there must be a minimum of 2,000 holders of the underlying security; and that there must be a trading volume of at least 2,400,000 shares in the preceding twelve months.

Moreover, the Exchange believes that requiring in the proposal that the underlying security be listed on the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange LLC ("Amex"), or the Nasdaq Stock Market, Inc. ("Nasdaq"), as provided for in the definition of "Covered Security" from Section 18(b)(1)(A) of the 1933 Act⁸ would ensure that the underlying security meets the highest listing standards in the securities industry. Should the underlying security not qualify as a Covered Security, the \$7.50 market price per share standard would still apply.

The Exchange believes that the proposed \$3.00 market price per share standard is also consistent with the Phlx maintenance and delisting criteria found in Phlx Rule 1010, which are used to determine whether an underlying security previously approved for Exchange options transactions no longer meets the requirements for listing. Commentary .02 to Phlx Rule 1010 sets a \$3.00 market price per share of the underlying security threshold for determining whether the Exchange may continue listing and trading options on an underlying security that has been previously approved for options trading under Phlx Rule 1009. As long as a \$3.00 standard is recognized as an acceptable pricing standard for options trading, albeit as a standard for continued listing, the Exchange believes that the proposed \$3.00 should be the threshold standard for initial listing as well.

Consistent with the listing standards proposed by other options exchanges,⁹ the Exchange has proposed, as a safeguard against price manipulation, that the underlying security has a closing market price of at least \$3.00 per share for the five consecutive business days preceding the date on which the Exchange submits a certificate to the OCC for listing and trading. The market price of such underlying security would be measured by the closing price reported in the primary market in which the underlying security is traded. The

Exchange believes that this "look back" period of five consecutive days would provide a sufficient measure of protection from any attempts to manipulate the market price of the underlying security.

The Exchange also believes that the proposed rule change, as amended, would encourage specialists to delist inactive option classes, particularly those classes in which the market price of the underlying security is below \$7.50. In particular, under Phlx Rule 1009 as it currently exists, a specialist on the Exchange to whom an option class has been allocated may be reluctant to delist an inactive option class if the market price of the underlying security is below \$7.50 because once delisted, the Exchange's current initial listing criteria must be met to re-list the option class, including the requirement that the market price per share of the underlying security be at least \$7.50 for the majority of business days during the preceding three months. The Phlx believes that the proposed \$3.00 price standard and the five-day look-back period would provide a reliable test for stability, would present a more reasonable time period for qualifying the price of an underlying security, and makes sense in today's economic conditions. The Exchange notes that the Commission recently granted Phlx and other options exchanges approval to list additional series on an option class when the market price of the underlying security is below \$3.00, provided that at least one other options exchange trades the series to be added, and at the time the other options exchange added that series, it met the requirements to add a new series, including the \$3.00 price requirement.¹⁰

Finally, for the purposes of consistency within the Phlx rules, the Exchange proposes to amend Commentary .05 to Phlx Rule 1009 which relates to Restructure Securities. Currently, Commentary .05 provides a method to certify that the market price of a Restructure Security satisfies the pricing requirement of Commentary .01 to Phlx Rule 1009, and specifically references the \$7.50 market price per share in Commentary .05(d). In order to

¹⁰ See Securities Exchange Act Release No. 46789 (November 7, 2002), 67 FR 69284 (November 15, 2002) (SR-Phlx-2002-71). The Exchange represents that this rule (Commentary .02 to Phlx Rule 1010) is consistent with similar rules regarding listing and maintenance standards of the Amex, International Securities Exchange, Inc. ("ISE"), Chicago Board Options Exchange, Inc. ("CBOE") and the Pacific Exchange, Inc. ("PCX"). See Commentary .02 to Amex Rule 916; ISE Rule 503(c); Interpretation and Policy .02 to CBOE Rule 5.4; and Commentary .02 PCX Rule 3.7.

make all of Phlx Rule 1009 consistent with the pricing standard change of this proposal, the amended rule would reflect that the market price standard for Restructure Securities that are "covered securities" will also be reduced from \$7.50 to \$3.00.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that by changing listing standards for Covered Securities, the Exchange can provide investors with those options that are most useful and demanded by them without sacrificing investor protection.

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

The Exchange 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 solicited or received with respect to the proposed rule change, as amended.

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

The foregoing rule change, as amended, has been filed by the Exchange as a "non-controversial" rule pursuant to Section 19(b)(3)(A) of the Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴ Consequently, because the foregoing rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4 thereunder.¹⁶

The Phlx has requested that the Commission waive the five-day pre-filing notice requirement and the thirty-day operative waiting period. The Commission is exercising its authority

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4.

⁸ See note 5 *supra*.

⁹ See note 6 *supra*.

to waive the five-day pre-filing requirement and believes that it is consistent with the protection of investors and the public interest to accelerate the operative date since the proposed rule change, as amended, is similar to the programs of other options exchanges, and raises no new regulatory issues.¹⁷ For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁸

At any time within sixty days of the filing of such 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.

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. 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-2003-27 and should be submitted by May 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-11587 Filed 5-8-03; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3495]

State of Texas

Johnson County and the contiguous counties of Bosque, Ellis, Hill, Hood, Parker, Somervell and Tarrant in the State of Texas constitute a disaster area due to severe thunderstorms that occurred on April 23, 2003.

Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 3, 2003, and for economic injury until the close of business on February 3, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, Suite 102, Forth Worth, TX 76155.

The interest rates are:

For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 349511 and for economic injury the number is 9V1400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 2, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03-11597 Filed 5-8-03; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Region VI—Houston District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region VI, Houston District Advisory Council, located in the geographical area of Houston, Texas will hold a public meeting at 9 a.m. on Wednesday, May 28, 2003. The meeting will be held in the Conference Room at the Small Business Administration, 87011 S. Gessner, Suite 1200, Houston, Texas 77074. The meeting will be conducted to discuss such matters that may be presented by members of the District Advisory Council, staff of the U.S. Small Business Administration, and others attending. Anyone wishing to make an oral or written presentation to the Board must contact Mr. Milton Wilson in writing by letter or fax no later than May 19, 2003, in order to be put on the agenda. Mr. Milton Wilson, District Director, U.S. Small Business Administration, 87011 S. Gessner, Suite 1200 Houston, TX 77074, (713) 773-6500 ph. or (713) 773-6550 fax.

Candace H. Stoltz,

Director, Advisory Councils.

[FR Doc. 03-11598 Filed 5-8-03; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Region V Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Hearing

The Small Business Administration Region V Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Thursday, May 22, 2003 at 2 p.m. in the COSE conference room located at 200 Tower City Center, 50 Public Square, Cleveland, OH 44113-2291, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Gilbert Goldberg in writing or by fax, in order to be put on the agenda. Gilbert Goldberg, District Director, U.S. Small Business Administration, Cleveland District Office, 1111 Superior Avenue East, Suite 630, Cleveland, OH 44114, phone (216) 522-4182, fax (216) 522-2038, e-mail gilbert.goldberg@sba.gov.

For more information, see our Web site at www.sba.gov/ombudsman.

¹⁷ For purposes of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on April 30, 2003, the date Phlx filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

¹⁹ 17 CFR 200.30-3(a)(12).