

investment trust for the securities of any other investment company, provides that the requirements of section 11(a) are applicable regardless of whether the exchange is on the basis of net asset value.

2. Because the proposed exchange offer constitutes an offer of exchange of two securities, each issued by a registered unit investment trust, Applicants may make the proposed exchange offer only after the Commission has approved the terms of the offer by an order pursuant to section 11(a) of the Act unless the terms of the exchange offer are consistent with those permitted by Commission rule.

3. Rule 11a-2 provides blanket Commission approval of certain types of offers of exchange of one variable annuity contract for another or of one variable life insurance contract for another. Variable annuity exchanges are permitted by Rule 11a-2 provided that the only variance from a relative net asset value exchange is an administrative fee disclosed in the offering account's registration statement and a sales load or sales load differential calculated according to methods prescribed in the rule. However, no exchange is permitted under Rule 11a-2 that involves a variable annuity acquired or exchanged that has both a front-end and a deferred sales load. Although the conditions required by Rule 11a-2 for variable life insurance policies are less extensive than those for variable annuities, there is Commission language in the release adopting Rule 11a-2 that suggests that the rule may have been intended to permit only exchanges of funding options within a single variable life insurance policy but not the exchange of one such policy for another. Investment Company Act Release No. 13407 (July 28, 1983) at "(2) Exchange Offers by Variable Life Insurance Separate Accounts." Because of the uncertainty as to the relief accorded by Rule 11a-2 for variable life insurance policies, Applicants can not rely on that rule.

4. Rule 11a-3 takes a similar approach to that of Rule 11a-2. As with Rule 11a-2, the focus of Rule 11a-3 is primarily on sales or administrative charges that would be incurred by investors for effecting exchanges. Applicants represent that the terms of the proposed offer are consistent with the Commission's approach in Rule 11a-3, to the extent that no additional sales charges will be incurred in connection with the exchange and no administrative fees will be charged to effect the exchange. However, because the investment company involved in the proposed exchange offer is a registered

separate account and is organized as a unit investment trust rather than as a management investment company, Applicants can not rely upon Rule 11a-3.

5. Applicants represent that the terms of the proposed exchange offer do not present the abuses against which section 11 was intended to protect. Applicants assert that no additional sales load or other fee will be imposed at the time of exchange, other than charges related to new underwriting needed for (i) certain optional insurance riders, (ii) a change to an improvement of underwriting classification, or (iii) a face amount increase.

6. Applicants state that the policy value and face amount of a New Policy acquired in the proposed exchange will be the same immediately after the exchange as that of the Old Policy immediately prior to the exchange, except in those instances where the face amount is increased so as to comply with Section 7702 of the IRC. Accordingly, Applicants assert that the exchanges, in effect, will be relative net asset value exchanges that would be permitted under section 11(a) if the Account were registered as a management investment company rather than as a unit investment trust.

7. Applicants represent that the description of the proposed exchange offer in letters to old policy owners and in the New Policy's prospectus will provide full disclosure of the material differences between the Old and New Policies. Further, Applicants state that: (a) Those letters, and any other sales literature used in connection with the exchange offer, will have been filed with NASD, Inc. for review; (b) each old policy owner will be offered, at no charge, personalized illustrations that compare the Old and New Policies; and (c) the personal illustrations will show whether a New Policy has greater or lesser costs and charges than the Old Policy. Applicants maintain that the New Policies should be less expensive than the Old Policies for many, if not most, policy owners, and contend that even where personalized illustrations show that the New Policy may be more expensive than the Old Policy, the owner may determine that the availability of a broader range of variable investment options under the New Policy make the New Policy more attractive than the Old Policy. Applicants assert that the disclosure and the illustrations provided upon request will provide Old Policy owners with sufficient information to determine which Policy they prefer.

8. Applicants contend that, like those cited, the present application involves

an exchange offer that does not present any duplication of sales loads or administrative fees. Because no additional sales load or administrative charges for effecting an exchange will be incurred as a result of any exchange pursuant to the proposed offer (other than in connection with underwriting for riders or for a face amount increase or for an improvement of underwriting classification), Applicants submit that the terms of the proposed offer are routine ones that may properly be approved by an order issued by the Division of Investment Management pursuant to delegated authority.

## Conclusions

Applicants submit that, for the reasons summarized above and to the extent necessary or appropriate, approval of Applicants' offer of exchange as described, and subject to the conditions set forth in this Application, is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Therefore, Applicants submit that the Commission should grant the approval sought by this Application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E6-14699 Filed 9-5-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54381; File No. SR-Phlx-2006-50]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Extending Its Pilot Programs for Dividend, Merger, and Short Stock Interest Strategies

August 29, 2006.

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 August 9, 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

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

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

have been prepared by Phlx. Phlx has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. On August 14, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</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**

Phlx proposes to extend for a period of six months, until March 1, 2007, the pilot programs for: (1) Fee caps of either \$1,000 or \$1,750, as described below, on equity option transaction and comparison charges on dividend,<sup>6</sup> merger,<sup>7</sup> and short stock interest<sup>8</sup> strategies; and (2) the license fee of \$0.05 per contract side imposed on dividend and short stock interest strategies. The current fee caps on equity option transaction and comparison charges on dividend, merger, and short stock interest strategies and \$0.05 per contract side license fee for dividend and short stock interest strategies are in effect as a pilot program that is currently scheduled to expire on September 1, 2006. Other than extending the pilot program for an additional six-month period until March 1, 2007, no other changes to the Exchange's current dividend, merger, and short stock interest strategy programs are being proposed at this time.

The text of the proposed rule change is available on Phlx's Web site at <http://www.phlx.com>, at the Office of

the Secretary at Phlx, and at the Commission's Public Reference Room.

### **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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, 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**

Currently, the Exchange provides a rebate for certain contracts executed in connection with transactions occurring as part of a dividend, merger or short stock interest strategy. Specifically, for these option contracts executed pursuant to a dividend or merger strategy, the Exchange rebates \$0.08 per contract side for Registered Options Trader ("ROT") executions and \$0.07 per contract side for specialist executions transacted on the business day before the underlying stock's ex-date. The ex-date is the date on or after which a security is traded without a previously declared dividend or distribution. The Exchange also provides for a rebate of \$0.08 per contract side for ROT executions and \$0.07 per contract side for specialist executions made pursuant to a short stock interest strategy.

The net transaction and comparison charges after the rebate is applied are capped at \$1,000 for short stock interest strategies executed on the same trading day in the same options class and at \$1,750 for merger strategies executed on the same trading day in the same options class.<sup>9</sup> The net transaction and comparison charges are capped at \$1,750 for dividend strategies executed on the same trading day in the same options class, except for a security with a declared dividend or distribution of

less than \$0.25. In that instance, the net transaction and comparison charges, after any applicable rebate is applied, are capped at \$1,000 for dividend strategies executed on the same trading day in the same options class.<sup>10</sup>

In addition, the Exchange assesses a license fee of \$0.05 per contract side for dividend and short stock interest strategies in connection with certain products that carry license fees.<sup>11</sup> The license fee is assessed on every transaction and is not subject to the \$1,750 or \$1,000 fee caps described above, nor does it count towards reaching the \$1,750 or \$1,000 fee caps. The \$1,000 and \$1,750 fee caps and the \$0.05 per contract license fee are subject to a pilot program that is scheduled to expire on September 1, 2006.

The Exchange represents that the purpose of extending the pilot program for the Exchange's \$1,000 or \$1,750 fee caps on equity option transaction and comparison charges on dividend, merger, and short stock interest strategies and its \$0.05 per contract side license fee imposed for dividend and short stock interest strategies until March 1, 2007 is to continue to attract additional liquidity to the Exchange and to remain competitive. In addition, the Exchange represents that the purpose of this proposal is to recoup the license fees owed in connection with the trading of products that carry license fees. Even with the assessment of the \$0.05 license fee per contract side, the Exchange believes that the fee caps and rebates should continue to encourage specialists and ROTs to provide liquidity for dividend spread strategies.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,<sup>12</sup> in general, and section 6(b)(4),<sup>13</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among its members.

#### **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

<sup>10</sup> The fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges. See Securities Exchange Act Release Nos. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR-Phlx-2006-40) and 53529 (March 21, 2006), 71 FR 15508 (March 28, 2006) (SR-Phlx-2006-16).

<sup>11</sup> For a complete list of these product symbols, see the Exchange's \$60,000 Firm-Related Equity Option and Index Option Cap Fee Schedule.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

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

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

<sup>5</sup> In Amendment No. 1, Phlx revised the proposed rule text to state that the pilot program would end on March 1, 2007.

<sup>6</sup> For purposes of this proposal, the Exchange defines a "dividend strategy" as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend. See Securities Exchange Act Release No. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR-Phlx-2006-40) and Phlx Fee Schedule.

<sup>7</sup> For purposes of this proposal, the Exchange defines a "merger strategy" as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. See *id.*

<sup>8</sup> For purposes of this proposal, the Exchange defines a "short stock interest strategy" as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. See *id.*

<sup>9</sup> See Securities Exchange Act Release Nos. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR-Phlx-2006-40); 53529 (March 21, 2006), 71 FR 15508 (March 28, 2006) (SR-Phlx-2006-16); 53115 (January 13, 2006), 71 FR 3600 (January 23, 2006) (SR-Phlx-2005-82); 51657 (May 5, 2005), 70 FR 24851 (May 11, 2005) (SR-Phlx-2005-22); and 51596 (April 21, 2005), 70 FR 22381 (April 29, 2005) (SR-Phlx-2005-19).

that is 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**

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>15</sup> because it establishes or changes a due, fee, or other charge. 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>16</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, 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-2006-50 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-2006-50. 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 principal office of 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-2006-50 and should be submitted on or before September 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Nancy M. Morris,**  
Secretary.

[FR Doc. E6-14698 Filed 9-5-06; 8:45 am]

**BILLING CODE 8010-01-P**

**DEPARTMENT OF STATE**

**[Public Notice 5514]**

**Advisory Committee on Transformational Diplomacy; Notice of Postponement of Meeting**

The Department of State announces the postponement of the meeting of the Secretary of State's Advisory Committee on Transformational Diplomacy because of scheduling conflicts. The meeting, as announced in Public Notice 5512, was to have taken place on September 6 and 7, 2006, at the U.S. Department of State at 2201 C Street, NW., Washington, DC. A new meeting date will be announced by **Federal Register** notice.

For more information, contact Madelyn Marchessault, Designated Federal Official of the Advisory Committee on Transformational Diplomacy at 202-647-0093 or at [Marchessaultms@state.gov](mailto:Marchessaultms@state.gov).

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

Dated: August 30, 2006.

**Marguerite Coffey,**

*Acting Director, Office of Management Policy, Department of State.*

[FR Doc. E6-14722 Filed 9-5-06; 8:45 am]

**BILLING CODE 4710-35-P**

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**Aviation Proceedings, Agreements Filed the Week Ending August 18, 2006**

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST-2006-25639.

*Date Filed:* August 14, 2006.

*Parties:* Members of the International Air Transport Association.

*Subject:* Composite Passenger Tariff Coordinating Conference, Composite Expedited Resolutions 002ae, 210 (Memo1328), Intended effective date: 1 December 2006.

*Docket Number:* OST-2006-25640.

*Date Filed:* August 14, 2006.

*Parties:* Members of the International Air Transport Association.

*Subject:* PAC/RESO/450 dated August 11, 2006. Twenty-Ninth Passenger Agency Conference (PACONF/29), Geneva, 28-29 June 2006, Finally Adopted Resolutions r1-r35, PAC/MEET/133 dated August 11, 2006; Minutes; Intended effective date: January 1, 2007.

*Docket Number:* OST-2006-25659.

*Date Filed:* August 16, 2006.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC23/123 Europe-South East Asia and Mail Vote 503, Special Passenger Amending Resolution 010v, From Philippines (PH) to Europe (Memo 0235), Intended effective date: 31 August 2006.

*Docket Number:* OST-2006-25677.

*Date Filed:* August 18, 2006.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC2 Europe-Middle East, Expedited Resolution 002dm (Memo 0225), Intended effective date: 15 September 2006.

*Docket Number:* OST-2006-25678.

*Date Filed:* August 18, 2006.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC2 Within Middle East, Expedited Resolution (Memo 0162),

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

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> The effective date of the original proposed rule change is August 9, 2006, the date of the original filing, and the effective date of Amendment No. 1 is August 14, 2006, the filing date of the amendment. For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change, as amended, under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 14, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).