.01(3), trading volume in an underlying security must be at least 2,400,000 shares during the preceding twelve months ("volume test"). Further, under Exchange Rule 1009, Commentary .01(4), the market price for an underlying security must be at least \$7.50 for the majority of business days during the three calendar month period preceding the date the security is selected as an underlying security ("price test").

The proposed rule change would facilitate the earlier listing of options on New securities by permitting the Exchange to determine whether a New security satisfies the volume and price tests by reference to the trading volume and market price history of an outstanding equity security ("Old security") previously issued by the issuer (or an affiliate thereof) of the New security. Specifically, if (a) the aggregate market value, assets, or revenue attributable to a New security is at least a stated percentage of the same measure attributable to the Old security; or (b) the aggregate market value of the New security is not less than \$500 million,3 then the Exchange would be permitted to determine whether a New security satisfies the volume and price tests by

reference to the training volume and market price history of the Old security. Reference may be made to the trading volume and market price history of the Old security only for trading days occurring prior to the ex-date for the transaction in which the New security is issued 4 and prior to any trading day for which these tests are determined to be satisfied by reference to the trading volume and market price history of the New security. If reference is made to either the trading volume or market price history of the Old security for this purpose for any period of time, then reference must be made to both such criteria in respect of the Old security for that period.

Further, should the New security be listed on an exchange or in an automatic quotation system that has an initial listing requirement equivalent to the requirement of paragraph (2) of Commentary .01 under Exchange Rule 1009 (number of shareholders must be at least 2,000), that requirement would be deemed to be satisfied. Finally, if at least 40 million shares of a New security will be outstanding in a restructuring, the Exchange may assume that the New security will satisfy the listing criteria set forth in Exchange Rule 1009, Commentary .01(1) (sufficient public float) and .01(2) (minimum number of security holders). Before relying on either of the assumptions described above, the Exchange must make a reasonable investigation as to the number of shareholders and public float of the New security and must not have determined that the requirements of paragraphs (1) and (2) will, in fact, not be satisfied.

The proposed rule change also would revise one of the Exchange's guidelines relating to the withdrawal of approval of underlying securities. Currently, under Exchange Rule 1010, Commentary .01(3), an underlying security will not be deemed to satisfy the Exchange's listing criteria if the trading volume of the underlying security in all markets was less than 1,800,000 shares in the preceding twelve months ("maintenance volume test") or, under Commentary .01(4), if the market price of the underlying security closed below \$5 for a majority of the business days during the preceding six months ("market price test"). Because New securities have limited trading history, they may be unable to satisfy the maintenance

volume test or the market price test at the time options on such securities are first listed for trading on the Exchange. Accordingly, the proposed rule change would add a new Commentary .01(7) to Exchange Rule 1010 to provide that the Exchange may determine whether a New security satisfies the maintenance volume and market price tests, as well as the comparable tests set forth in Commentary .05 under Exchange Rule 1010, by reference to the trading volume and price history of the Old security prior to the first day of trading in the New security, including "when issued" trading.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act in general and, in particular, with Section 6(b)(5) in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, as well as 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 will 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 solicited or received.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such other 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 the 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.

³The proposed rule change would apply to a New security if at least one of the following conditions is met:

⁽¹⁾ Any one or more of (A) the aggregate market value of the New security, (B) the aggregate market value of the assets attributed to the business represented by the New security, or (C) the revenues attributed to the business represented by the New security are at least 25% of the same measure determined with respect to the Old security or the business represented by the Old security, as applicable, calculated in a comparable manner on a basis that reflects the inclusion of the business represented by the New security, provided that in the case of the qualification of a New security under clause (B), the aggregate book value of the assets attributed to the business represented by the New security is not less than \$50 million, and in the case of the qualification of a New security under clause (C), the revenues attributed to the business represented by the New security are not less than \$50 million;

⁽²⁾ Any one or more of (A) the aggregate market value of the New security, (B) the aggregate book value of the assets attributed to the business represented by the New security, or (C) the revenues attributed to the business represented by the New security are at least 331/3% of the same measure determined with respect to the Old security or the business represented by the Old security, as applicable, calculated in a comparable manner on a basis that reflects the exclusion of the business represented by the New security, provided that in the case of the qualification of a New security under clause (B), the aggregate book value of the assets attributed to the business represented by the New security is not less than \$50 million, and in the case of the qualification of a New security under clause (C), the revenue attributed to the business represented by the New security are not less than \$50 million; or

⁽³⁾ The aggregate market value represented by the New security is at least five hundred million dollars (\$500,000,000).

⁴ Under the proposed rule change, options contracts may not initially be listed for trading in respect of a New security until such time as shares of the New security are issued and outstanding and are the subject of trading that is not on a "when issued" basis or in any other way contingent on the issuance or distribution of the shares.