

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54847; File No. SR-NYSE-2006-97]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to NYSE Rule 342.30

November 30, 2006.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> and Rule 19b-4 thereunder, notice is hereby given that on October 26, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed amendments to its Rule 342.30, as described in Items I, II and III below, which items have been prepared by the Exchange. 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 NYSE is filing with the Commission a proposed rule change that would amend Rule 342.30 ("Annual Report and Certification") to require submission of the process report prepared in connection with the Chief Executive Officer ("CEO") certification, as required under Rule 342.30(e)(iii), to the Board of Directors and Audit Committee (if such committee exists) of the member organization on or before April 1st of each year.

#### 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 and discussed any comments it received on the proposed rule change. The text of the proposed rule change is available on the NYSE's Web site ([www.NYSE.com](http://www.NYSE.com)), at the NYSE's principal office, and at the Commission's Public Reference Room. 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 is filing with the Commission a proposed rule change that would amend Rule 342.30 to require that the report required pursuant to Rule 342.30(e)(iii) (herein referred to as the "process report") in connection with a member organization's CEO certification be submitted to the member organization's board of directors and audit committee (if such committee exists) on or before April 1st of each year. The purpose of the rule change is to better harmonize the requirements of Rule 342.30 with those of NYSE Rule 354 ("Reports to Control Persons").

##### Background

##### Rule 342.30

Rule 342.30 requires each member organization to file with the Exchange, by April 1st of each year, a report (the "Annual Report") outlining its supervision and compliance efforts in prescribed regulatory areas during the preceding year and assessing the adequacy of its ongoing compliance processes and procedures. The Annual Report submitted to the Exchange is also required to include, pursuant to Rule 342.30(e), a certification by the CEO of each member organization confirming that the member organization has in place processes to:

(A) Establish and maintain policies and procedures reasonably designed to achieve compliance with applicable Exchange rules and federal securities laws and regulations;

(B) Modify such policies and procedures as business, regulatory and legislative changes and events dictate; and

(C) Test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure continuing compliance with Exchange and federal securities laws and regulations.

Subsection (e)(iii) of Rule 342.30 requires that the above-stated processes be evidenced in a process report that is to be reviewed by the CEO, the Chief Compliance Officer, and such other officers as the organization may deem necessary to make the certification. Subsection (e)(iii) also requires that the process report be submitted to the member organization's board of directors and audit committee (if such committee exists), although the timing of such submission is not explicitly

stated. The Exchange has, heretofore by interpretation, required such submission prior to CEO certification.

##### Rule 354

Subsection (a) of Rule 354 requires, in relevant part, that each member organization submit, by April 1st of each year, a copy of the Rule 342.30 Annual Report (also due to the Exchange by April 1st) to one or more of its control persons or, if the member organization has no control person, to the audit committee of its board of directors or its equivalent committee or group.

In order to better harmonize the process report submission requirements of Rule 342.30(e)(iii) with the Annual Report submission requirements of Rule 354(a), it is proposed that Rule 342.30(e)(iii) be amended to require each member organization to submit the process report to its board of directors and audit committee (if such committee exists) on or before April 1st of each year, consistent with the timing requirements of Rule 354(a) with respect to submission of the Annual Report. This would promote timely submission of the process report to the board of directors and audit committee, while serving the practical purpose of allowing member organizations to submit it together with the Annual Report so that it may be reviewed as a single comprehensive package.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)<sup>3</sup> of the Act which requires NYSE to have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. In this regard, the proposed rule change promotes timely submission of substantive regulatory material to member organizations' governing bodies by better coordinating the requirements of Rule 342.30(e)(iii) (Process Report) and Rule 354(a) (Submission of Annual Report to Control Persons).

#### 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.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</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*

The Exchange has 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 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, 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-NYSE-2006-97 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-NYSE-2006-97. 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 the NYSE. 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-NYSE-2006-97 and should be submitted on or before December 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54834; File No. SR-Phlx-2006-69]

**Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to a Direct Registration System**

November 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 October 31, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission") and on November 14, 2006, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Phlx proposes to adopt new Rule 868 to require certain listed securities to be eligible for a Direct Registration System ("DRS") operated by a securities depository registered as a clearing

agency under Section 17A of the Act starting on January 1, 2007.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, 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. Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**(1) Purpose**

The purpose of proposed new Phlx Rule 868<sup>4</sup> is to reduce the costs, risks, and delays associated with the physical delivery of securities certificates by requiring that certain securities be eligible for DRS.<sup>5</sup> Proposed Rule 868 would require that on or after January 1, 2007, all securities initially listing on Phlx must be eligible for DRS operated by a securities depository that is a clearing agency registered under Section 17A of the Act ("securities depository"). This provision would not extend to (i) securities of companies which already have securities listed on Phlx; (ii) securities of companies which immediately prior to such listing had securities listed on another national securities exchange; (iii) derivative products,<sup>6</sup> or (iv) securities (other than stocks) which are book-entry-only.

<sup>3</sup> The Commission has modified portions of the text of the summaries prepared by the Phlx.

<sup>4</sup> The exact text of the Phlx proposed rule change is set forth in its filing, which can be found at <http://www.phlx.com/exchange/rulefilings/2006/S-2006-69.pdf>.

<sup>5</sup> The Commission has approved similar rule changes filed by the New York Stock Exchange LLC, NASDAQ Stock Market LLC, the American Stock Exchange LLC, and the NYSE Arca, Inc. that require certain listed companies securities become DRS eligible. Securities Exchange Act Release Nos. 54289 (August 8, 2006), 71 FR 47278 (August 16, 2006) [File No. SR-NYSE-2006-29]; 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) [File No. SR-NASDAQ-2006-008]; 54290 (August 8, 2006), 71 FR 47262 (August 16, 2006) [File No. SR-Amex-2006-40]; 54410 (September 7, 2006), 71 FR 54316 (September 14, 2006) [File No. SR-NYSE Arca-2006-31].

<sup>6</sup> For purposes of proposed Rule 868, the term "derivative products" means standardized options issued by The Options Clearing Corporation ("OCC") or other securities that are issued by OCC or another limited purpose entity or trust that are based solely on the performance of an index or

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<sup>4</sup> 17 CFR 200.30-3(a)(12).

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

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