

Xcel request authority to implement a stockholder protection rights plan ("Plan") and related agreement creating the stockholder rights ("Rights Agreement"). The Plan is intended to maximize stockholder value due to opportunistic takeover proposals. Under the Plan, the board of directors of Xcel ("Board") would declare a dividend of one right ("Rights") for each outstanding share of Xcel common stock, par value \$2.50 per share ("Common Stock"), payable to all stockholders of record on the close of business in the tenth business day following the first public announcement by Xcel of the granting of an order by the Commission approving this application-declaration.

Each Right issued to a registered holder of Common Stock would, after the Right becomes exercisable, entitle the holder to purchase from Xcel one share of Common Stock at a price of \$95.00 per Right, subject to adjustment ("Exercise Price"). The Rights would not entitle the holders to make a discounted purchase of shares of Common Stock or the common stock of the person acquiring Xcel until the occurrence of one of the events described below. The Rights will expire at the close of business ten years from the date of the Rights Agreement, unless earlier redeemed exchanged by Xcel.

Until the earlier of the two dates described below ("Flip-In Date"), Rights would not be exercisable and would trade with the outstanding shares of Common Stock. One date occurs on the day the Board publicly announces (or a later date if the board so chooses) that a person or group ("Acquiring Person") has acquired beneficial ownership of 15% or more of the Common Stock. The second date occurs ten business days (unless extended by the Board) after any person or group has commenced a tender or exchange offer which would, upon its consummation, result in such person or group becoming an Acquiring Person.

After the Flip-In Date, the holders of the Rights would immediately have the right to receive, for each Right exercised, Common Stock having a market value equal to two times the Exercise Price then in effect. Under certain circumstances where Xcel is acquired in a business combination transaction with, or 50% or more of its assets or earning power is sold or transferred to, another person or entity ("Acquiror"), exercise of a Right will entitle its holder to receive common stock of the Acquiror having a market value equal to two times the Exercise Price then in effect. Rights beneficially owned by any Acquiring Person and

certain transferees of the Acquiring Person will be null and void.

The Rights may be redeemed, as a whole, at the discretion of the Board, at a Redemption Price of \$0.01 per Right, subject to adjustment, which will be paid, at Xcel's option, in cash, shares of Common Stock or other equivalent Xcel securities, at any time prior to the close of business on the date that any person has become an Acquiring Person.

At any time after a Flip-in Date and prior to the time that any person (other than Xcel and certain related entities), together with its affiliates and associates, becomes the beneficial owner of 50% or more of the outstanding shares of Common Stock, the Board may direct the exchange of shares of Common Stock for all of the Rights (other than Rights which have become void) at the exchange ratio of one share of Common Stock per right, subject to adjustment.

The Exercise Price payable, and the number of shares of Common Stock (or other securities, as the case may be) issuable upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (a) in the event of a stock dividend on, or a subdivision or combination of, the Common Stock, or (b) upon the distribution to holders of the Common Stock of securities or assets (excluding regular periodic cash dividends) whether by dividend, reclassification, recapitalization or otherwise.

The terms of the Rights may be amended by the Board (a) prior to the Flip-in Date in any manner and (b) on or after the Flip-in Date to cure any ambiguity, to correct or supplement any provision of the Rights Agreement which may be defective or inconsistent with any other provisions, or in any manner not adversely affecting the interests of the holders of the Rights generally.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44055;
File No. SR-Phlx-01-32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Trading of Options on Exchange Traded Fund Shares

March 8, 2001.

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 March 5, 2001, 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. The proposed rule change has been filed by the Phlx as a "non-controversial" rule change under Rule 19b-4(f)(6)³ under the Act. 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 Phlx proposes to amend Phlx Rule 1012, Commentary .05 by creating one point strike price intervals for options on Exchange-Traded Fund Shares. In addition, the Phlx proposes to amend Phlx Rule 101 to establish the hours of trading for options on the Nasdaq-100 Index Tracking Stock, a particular class of options on Exchange-Traded Fund Shares,⁴ from 9:30 AM to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ The Nasdaq-100®, Nasdaq-100 Index®, and Nasdaq® are trade or service marks of The Nasdaq Stock Market, Inc. (with its affiliates, the "Corporations") and are licensed for use by the Exchange. Options on Nasdaq-100 Index Tracking Stock (the "Products") have not been passed on by the Corporations as to their legality or suitability. The Products are not issued, endorsed, sold, or promoted by the Corporations. The Corporations make no warranties and bear no liability with respect to the Products. The Corporations do not guarantee the accuracy and/or uninterrupted calculation of the Nasdaq-100 Index® or any data included therein. The Corporations make no warranty, express or implied, as to results to be obtained by Licensee, owners of the Products, or any other person or entity from the use of the Nasdaq-100 Index® or any data included therein. The Corporations make no express or implied warranties, and expressly disclaim all warranties of merchantability or fitness for a particular purpose or use with respect to the Nasdaq-100 Index® or any data included therein. Without limiting any of the foregoing, in no event shall the Corporations have any liability for any lost profits or special,

4:15 PM Eastern Standard Time ("EST"), except the last trading day of each calendar month, when trading in options on Nasdaq-100 Index Tracking Stock will end at 4:05 PM EST. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

Rule 101. Hours of Business

Supplementary Material

.01 *Options Trading after 4:02 PM.* A trading rotation in any class of option contracts may be effected even though employment of the rotation will result in the transaction on the Exchange after 4:02 P.M. provided such rotation is conducted pursuant to Rule 1047 or Rule 1047A. *The hours of trading for Options on Nasdaq-100 Index Tracking Stock shall commence at 9:30 AM and end at 4:15 PM, each business day, except the last trading day of each calendar month, when trading in Options on Nasdaq-100 Index tracking Stock will end at 4:05 PM.*

.02-.03 No Change.

Rule 1012. Series of Options Open for Trading

(a)-(d) No Change.

Commentary

.01-.04 No Change.

.05.

(a) The interval of strike prices of series of options on individual stocks [or Exchange-Traded Fund Shares] will be \$2.50 or greater where the strike price is \$25 or less, \$5.00 or greater where the strike price is greater than \$25 but less than \$200, and \$10 or greater where the strike price is \$200 or more, except as provided in paragraph (b) below. *The interval of strike prices of series of options on Exchange-Traded Fund Shares will be \$1 or greater where the strike price is \$200 or less.*⁵

(b) The Exchange may select up to a specified number of its listed options on individual stocks [or Exchange-Traded Fund Shares] for which the interval of strike prices will be \$2.50 where the strike price is greater than \$25 but less than \$50. In addition to those options selected by the Exchange, the strike price interval may be \$2.50 in any multiply-traded option once another

exchange trading that option selects such option, as part of this program.

* * * * *

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. 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 provide one point strike price intervals for options on Exchange-Traded Fund Shares and to establish the hours of trading in options on the Nasdaq-100 Index Tracking Stock from 9:30 AM to 4:15 PM EST, except the last trading day of each calendar month, when trading in options on the Nasdaq-100 Index Tracking Stock will end at 4:05 PM EST.

The Phlx received approval by the Commission to trade options on Exchange-Traded Fund Shares on February 2, 2001.⁶ The Phlx proposes to amend Rule 1012, Commentary .05 regarding strike price intervals for options on Exchange-Traded Fund Shares to bracket the Fund Shares at one point intervals up to a share price of \$200. This proposed amendment is consistent with the strike price interval established for options on Exchange-Traded Fund Shares on the American Stock Exchange LLC ("Amex").⁷

Additionally, the Phlx proposes to amend its hours of business⁸ to trade options on the Nasdaq-100 Index Tracking Stock from 9:30 AM to 4:15 PM EST, except that last trading day of a calendar month, when trading in Options on the Nasdaq-100 Index Tracking Stock will end at 4:05 PM EST. These hours are consistent with the trading of Options on Nasdaq-100 Index Tracking Stock on Amex.

The Phlx believes that these amendments should increase investor protection by allowing Options on Exchange-Traded Fund Shares and, in particular, options on the Nasdaq-100 Index Tracking Stock to trade at the same strike price intervals and trading hours on the Phlx as on other exchanges. Further, the Phlx believes that these amendments do not impose any significant burden on competition because these amendments further enable the Phlx to compete with other exchanges in these products.

2. Statutory Basis

The Phlx believes that the proposed amendments should assist in allowing the Exchange to offer investors another choice of venue to conduct trading in these products. Thus, the Phlx believes that the proposed rule change is consistent with Section 6(b)(5) of the Act⁹ in that it is designed to promote just and equitable principles of trade, to remove impediments to and 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 believes that the proposed rule change does not impose any burden on competition 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

The Phlx has neither solicited nor received any written comments on the proposed rule change.

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

Because the foregoing proposed rule change: (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 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Phlx has given written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the rule change, or such shorter time as

incidental, punitive, indirect, or consequential damages, even if notified of the possibility of such damages.

⁵ As per a telephone conversation between Edith Hallahan, First Vice President, Deputy General Counsel, Phlx, and Heather Traeger and Lisa Jones, Attorneys, Division of Market Regulation, Commission, March 8, 2001, the Commission corrected a typographical error that appeared in the proposed rule language.

⁶ See Securities Exchange Act Release No. 43921 (February 2, 2001), 65 FR 9739 (February 9, 2001) (Order approving SR-Phlx-00-107).

⁷ See Securities Exchange Act Release No. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998) (Order approving SR-Amex-96-44).

⁸ Phlx Rule 101.

⁹ 15 U.S.C. 78f(b)(5).

designated by the Commission, the proposed rule change has become effective pursuant to section 19(b)(3)(A)¹⁰ of the Act and Rule 19b-4(f)(6)¹¹ thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx has requested that the Commission accelerate the operative date to March 8, 2001. The Commission finds that accelerating the operative date of the proposed rule change to enable the Phlx to compete with other exchanges in these products and provide investors with an additional venue to trade these products is consistent with the protection of investors and the public interest, and thus designates March 8, 2001 as the operative date of this filing.¹³

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. 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-01-32 and should be submitted by April 6, 2001.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² The Phlx has requested and the Commission has agreed to waive the five day pre-filing notice equipment.

¹³ For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44057;
File No. SR-Phlx-01-03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of That Portion of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the prohibition Against Harassment and Certain Similar Improper Trading Practices in the Exchange Codes of Conduct

March 9, 2001.

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 January 11, 2001, 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 and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons and to approve on an accelerated basis the portion of the proposal prohibiting harassment and certain other improper conduct.

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

The Phlx proposes to file its Employee Code of Conduct and its Code of Conduct for Board Members and Committee Members (collectively "Codes of Conduct"). The Phlx proposes to incorporate in its Codes of Conduct language similar in import to that of proposed new Commentary .01 ("Prohibition Against Harassment") to Exchange Rule 707 ("Just and Equitable Principles of Trade").³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On November 13, 2000, the Exchange filed SR-Phlx-00-94, which added proposed new Commentary .01 to Exchange Rule 707 regarding prohibition against harassment and other improper behavior because of listing or competitive practices. Simultaneously with this filing, the Exchange filed SR-Phlx-01-02, which adds proposed Commentary .02 to Exchange Rule 1009 regarding listing procedures and is currently pending with the Commission. These three filings are being done in

The text of the proposed rule change is available at the Phlx or the Commission.

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. The text of these statements may be examined at the places specified in Item III 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 Exchange has long insisted that members of the Boards of Governors of the Exchange and its subsidiaries, committee members of the Exchange and its subsidiaries, and employees, officers, and agents of the Exchange and its subsidiaries ("Covered Persons") observe the highest standards of business ethics and fair dealing. The Exchange has therefore had an Employee Code of Conduct and a Code of Conduct of Board Members and Committee Members. The Exchange is now proposing to file these Codes of Conduct, which contain new proposed anti-harassment language similar to Commentary .01 of Rule 707, with the Commission.⁴

The Phlx proposes to amend the Codes of Conduct to state that Covered Persons may not directly or indirectly threaten, harass, intimidate, refuse to deal with, or retaliate against any member, member organization, person associated with or employed by a member or member organization, or other market participant because such person or entity has: (a) Made a proposal to any exchange or other market to list or trade any option class; (b) advocated or proposed to list or trade

order to, among other things, fulfill Securities and Exchange Commission requirements pursuant to In the Matter of Certain Activities of Options Exchanges, Securities Exchange Act Release No. 43268 (September 11, 2000). Although proposed by the Phlx as part of this filing, the Commission is not considering at this time proposed procedures for the listing of new options classes. Instead, the Phlx's proposed listing procedures will be considered pursuant to File No. SR-Phlx-01-02.

⁴ The Commission has directed the options markets to implement rules and codes of conduct regarding the type of behavior described herein. See Securities Exchange Act Release No. 43268, *supra* note 3.