

non-member brokers and non-member dealers; (3) codify an interpretive position with respect to which firms are required to report standardized options positions under the NASD's options position reporting requirements; and (4) clarify that a member may have its clearing firm report options positions to the NASD.

In addition, the NASD proposed several technical amendments to the options position reporting requirements to take into account staff interpretive positions with respect to reporting standardized and conventional options. Specifically, the amendments codify options position reporting requirements set forth in Notice to Members 94-46, which states that the reporting requirements are "applicable to all standardized options positions established by members of their customers." Access firms are defined in the requirements as NASD members that conduct a business in exchange-traded options but are not themselves members of the options exchange upon which such options are listed and traded. Limiting reporting of standardized options positions under NASD rules to access firms only avoids imposing duplicative reporting requirements on NASD members who are also members of an options exchange, inasmuch as members of an options exchange (*i.e.*, dual members) are required to report positions on standardized options pursuant to the rules of the options exchange(s) of which they are a member.

Finally, the rule proposal clarifies that, consistent with current practice, a member may report positions directly to the Association or have such positions reported to the Association by another firm. According to the Association, this amendment would not eliminate the member's ultimate responsibility to ensure that the firm reporting the positions on the member's behalf makes the necessary filings with the NASD.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities association. Specifically, the Commission finds that the proposal to amend NASD Rule 2860 is consistent with section 15A(b)(6) of the Act.⁴

Section 15A(b)(6)⁵ requires that the rules of the registered national securities association be designed to prevent fraudulent and manipulative acts and

practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, facilitating transactions in securities, 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.⁶

The Commission believes that the proposed rule change will protect individual investors and the public by enabling the NASD to better monitor the financial exposure of its member firms. The Commission also believes that the proposed rule change will result in consistent application of position and exercise limits by ensuring that trades effected by NASD members on behalf of non-member brokers and non-member dealers are also subject to those limits. Finally, the Commission believes that the proposed provisions clarifying options reporting procedures, and other technical amendments, are also consistent with the overall objective of the rule proposal.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-NASD-00-36) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-32649 Filed 12-21-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43714; File No. SR-PCX-00-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Financial Arrangements of Options Floor Members

December 12, 2000.

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 July 7, 2000, the Pacific Exchange, Inc. ("PCX" 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 PCX.³ On November 30, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.⁴ 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 PCX is proposing to eliminate its current PCX Rule 6.40 on financial arrangements of options floor members and is also proposing to adopt supplemental rules on options floor members who are trading for the same joint account. The text of the proposed rule change follows. Additions are in *italics*; deletions are in [brackets].

¶ 3809 Disclosure of Financial Arrangements of Members

Rule 4.18(a)-(b)—No change.

[(c) The Exchange may restrict the trading activity of Members with financial arrangements pursuant to Rule 6.40. Such restrictions are subject to appeal, pursuant to Rule 11.7.]

¶ 4953 Financial Arrangements of Options Floor Members

Rule 6.40(a)—*Reserved* [Financial Arrangements Defined. Two Members have a "financial arrangement" with each other for purposes of this Rule if:]

[(1) One Member directly finances the other Member's dealings upon the Exchange, the amount financed is \$5,000 or more, and the Member providing the financing is entitled to a share of the other Member's trading profits; or

(2) Both Members are registered with the Exchange as nominees of the same Member Organization; or

(3) Both Members are registered with the Exchange to trade on behalf of the same joint account; or

(4) Both Members' dealings upon the Exchange are financed by the same source, the amount financed is \$5,000 or more, and the Member providing the financing is entitled to a share of each of the other Members' trading profits.]

[For purposes of this Rule, the term "Member" shall include both Members and Member Organizations.]

[(b) Options Floor Trading Restrictions.]

³ The PCX subsequently submitted the text of the proposed rule change language properly formatted for publication in the **Federal Register**. The reformatted version did not contain any substantive changes to the proposed rule change language. See letter dated November 1, 2000, from Michael D. Pierson, PCX, to Kelly Riley, Division of Market Regulation, SEC.

⁴ The PCX amended the original filing by way of letter amendment. See letter dated November 29, 2000, from Michael D. Pierson, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC.

⁴ 15 U.S.C. 78o-3(b)(6).

⁵ *Id.*

⁶ In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

[(1) A Market Maker who has a "financial arrangement" with another Member of Member Organization (as specified herein) and the Member or Member Organization having a "financial arrangement" with that Market Maker, may not bid, offer and/or trade in the same trading crowd at the same time in the absence of an exemption from the Options Floor Trading Committee, as provided in subsection (b)(4), below.

(2) Any order of a Market Maker with an existing financial arrangement, that is represented or executed by a Floor Broker, shall be so represented or executed in accordance with the procedures set forth in Rule 6.85. Additionally, a Market Maker may not bid, offer and/or trade in a trading crowd in which a Floor Broker holds an order on behalf of a Market Maker with whom he has an existing financial arrangement may not be concurrently represented, by one or more Floor Brokers, in a particular trading crowd.

(3) Two or more Lead Market makers (LMMs) who are trading on behalf of the same Member organization may not bid, offer and/or trade in the same option series at the same time. However, two or more LMMs who do not have financial arrangements with each other, as defined in subsection (a) of this Rule, or who have been granted an exemption pursuant to subsection (b)(4), below, may bid, offer and/or trade in the same option series at the same time.

(4) Exemptions. Members with financial arrangements may be exempted from the trading restrictions set forth in this subsection, as follows:]

[(A) Long-Term Exemptions. The Options Floor Trading Committee may grant long-term exemptions to Members on a case-by-case basis if it determines that a fair and orderly market would not be impaired by allowing such Members with financial arrangements to trade in the same trading crowd at the same time. In making such determinations, the Committee shall consider the following factors: (1) The nature of the financial arrangement; (2) the degree of independence to be maintained by the applicants in making trading decisions; (3) the impact on competition in the trading crowd if an exemption were granted; (4) the applicants' prior patterns of trading if they have previously traded in the same trading crowd at the same time; (5) and any other information relevant to whether the applicants would tend collectively to dominate the market in a particular trading crowd or a particular option series. The Committee may revoke any long-term exemption granted pursuant to this subsection if it determines that a fair and orderly market would otherwise be impaired by a continuation of the exemption. The Committee will review, on at least an annual basis, all long-term exemptions that are in effect at the time.]

[(B) Short-term Exemptions. Two Floor Officials may grant short-term exemptions to Members on a case-by-case basis if such Floor Officials determine that a fair and orderly market would not be impaired and that the need for liquidity in the trading crowd warrants such action. Unless otherwise specified, any exemption granted pursuant to this Rule shall extend for no

longer than the trading day on which it is provided. The Committee shall review, on a regular basis, each exemption granted pursuant to this subsection (b).]

[(c) Reporting to the Exchange. Market Makers, Floor Brokers and Member Organizations are required to report the terms of their financial arrangements to the Exchange pursuant to Rule 4.18 ("Disclosure of Financial Arrangements of Members").]

[Commentary

.01 The purpose of Rule 6.40 is to prevent Market Makers who have financial arrangements with each other from unfairly dominating the market in any option issues or series, as prohibited by Rule 6.37(c)(2). The Options Floor Trading Committee has determined that any Market Makers who are not technically covered by the terms of Rule 6.40, but who unfairly dominate the market in any option issue or series, shall be considered to be in violation of their obligation to contribute to the maintenance of fair and orderly markets and to act in accordance with use and equitable principles of trade.]

* * * * *

¶ 5193 Joint Accounts

Rule 6.84(a)–(e)—No change.

[(f) Participants in a joint account must comply with the trading restrictions provided in Rule 6.40]

[(g)–(h)]—(f)–(g)—No change.

(h) *The following trading restrictions apply to Members who are registered with the Exchange to trade on behalf of the same joint account:*

(1) *A joint account may be simultaneously represented in a trading crowd only by participants who are trading in-person. Orders for a joint account may not be entered in a trading crowd in which a participant of the joint account is trading in-person for the joint account. If no participant is trading in-person in the trading crowd for the joint account, then a Floor Broker may represent orders in the trading crowd on behalf of the joint account as long as the same option series is not concurrently represented for the same joint account by more than one Floor Broker.*

(2) *Market Makers may alternate trading in-person between their individual and joint accounts while in the trading crowd. Market Makers who alternate trading between accounts must ensure that while trading the joint account another participant does not enter orders through a Floor Broker for the joint account in the same trading crowd.*

(3) *Before beginning trading on behalf of a joint account, participants in the joint account are responsible for determining whether any Floor Brokers are representing orders in the same trading crowd on behalf of the same joint account.*

(4) *Floor Brokers may not represent a joint account of which they are a participant.*

(5) *Market Makers who are trading in person in a trading crowd may not enter orders with a Floor Broker either for joint accounts in which they are participants or for their individual accounts.*

(6) *The following trades are prohibited:*

(A) *Trades between a joint account participant's individual account and a joint account in which that person is a participant.*

(B) *Trades between two joint accounts having common participants.*

(C) *Trades in which the buyer and seller are representing the same joint account and are on opposite sides of the transaction.*

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 PCX 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 PCX 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 proposing to eliminate PCX Rule 6.40 (Financial Arrangements of Options Floor Members), which currently prohibits options floor members with financial arrangements from trading in the same trading crowd without receiving either a short-term or long-term exemption from the Options Floor Trading Committee ("OFTC"). The Commission approved the most recent version of PCX Rule 6.40 in 1996.⁵ Based on its experience with the rule since that time, the PCX now believes that many of its current provisions do not prevent the activities that the rule was designed to deter. Therefore, after careful consideration, the Exchange is now proposing to replace PCX Rule 6.40 with new PCX Rule 6.84(h).

a. *Definition of Financial Arrangement.* PCX Rule 6.40(a) currently defines the term "financial arrangement" very broadly, so that it covers both members who are trading for the same firm as well as members who are backed by the same source (even though they may be trading for different firms).⁶

⁵ See Exchange Act Release No. 37543 (August 8, 1996), 61 FR 42458 (August 15, 1996). See also Exchange Act Release No. 35277 (January 25, 1995), 60 FR 6330 (February 1, 1995); Exchange Act Release No. 32775 (August 20, 1993), 58 FR 45368 (August 27, 1993).

⁶ PCX Rule 6.40(a) provides:

Two Members have a 'financial arrangement' with each other for purposes of this Rule if: (1) One Member directly finances the other Member's

b. *Trading Prohibitions.* PCX Rule 6.40(b)(1) currently prohibits market makers with common financial arrangements from trading in the same trading crowd at the same time, unless they have an exemption from the OFTC.⁷ PCX Rule 6.40(b)(2) prohibits market makers from trading in a crowd where an order is being represented by a floor broker on behalf of another market maker who is affiliated with the original market maker.⁸ In addition, PCX Rule 6.40(b)(3) restricts multiple lead market maker ("LMM") representatives from trading simultaneously in the same option series.⁹ As discussed below, the PCX is proposing to eliminate these restrictions except for those relating to multiple representation of market maker accounts through the use of floor brokers.

c. *Exemptions to Current Rule.* PCX Rule 6.40(b)(4)(A) permits the OFTC to grant long-term exemptions to the trading restrictions in PCX Rule 6.40.¹⁰

dealings upon the Exchange, the amount financed is \$5,000 or more, and the Member providing the financing is entitled to a share of the other Member's trading profits; or (2) Both Members are registered with the Exchange as nominees of the same Member Organization; or (3) Both Members are registered with the Exchange to trade on behalf of the same joint account; or (4) Both Members' dealings upon the Exchange are financed by the same source, the amount financed is \$5,000 or more, and the Member providing the financing is entitled to a share of each of the other Members' trading profits. For purposes of this Rule, the term 'Member' shall include both Members and Member Organizations.

⁷ PCX Rule 6.40(b)(1) provides:

A Market Maker who has a 'financial arrangement' with another Member or Member Organization (as specified herein) and the Member or Member Organization having a 'financial arrangement' with that Market Maker, may not bid, offer and/or trade in the same trading crowd at the same time in the absence of an exemption from the Options Floor Trading Committee, as provided in subsection (b)(4), below.

⁸ PCX Rule 6.40(b)(2) provides:

Any order of a Market Maker with an existing financial arrangement, that is represented or executed by a Floor Broker, shall be so represented or executed in accordance with the procedures set forth in Rule 6.85. Additionally, a Market Maker may not bid, offer and/or trade in a trading crowd in which a Floor Broker holds an order on behalf of a Market Maker with whom he has an existing financial arrangement. Orders of a Market Maker having an existing financial arrangement may not be concurrently represented, by one or more Floor Brokers, in a particular trading crowd.

⁹ PCX Rule 6.40(b)(3) provides:

Two or more Lead Market Makers (LMMs) who are trading on behalf of the same Member Organization may not bid, offer and/or trade in the same option series at the same time. However, two or more LMMs who do not have financial arrangements with each other, as defined in subsection (a) of this Rule, or who have been granted an exemption pursuant to subsection (b)(4), below, may bid, offer and/or trade in the same option series at the same time.

¹⁰ PCX Rule 6.40(b)(4)(A) provides:

Long-Term Exemptions. The Options Floor Trading Committee may grant long-term

PCX Rule 6.40(b)(4)(B) permits two floor officials to grant short-term exemptions.¹¹ To obtain a long-term exemption, members are currently required to submit an application to the OFTC and to provide information relevant to the factors set forth in PCX Rule 6.40(b)(4)(A). In assessing an application, the OFTC considers the stated purpose of PCX Rule 6.40, which is "to prevent Market Makers who have financial arrangements with each other from unfairly dominating the market in any option issues or series, as prohibited by [PCX] Rule 6.37(c)(2)."¹²

d. *Elimination of PCX Rule 6.40.* The Exchange is now proposing to eliminate PCX Rule 6.40. The current rule informs the OFTC (i.e., floor officials) of common financial arrangements among other floor members. As noted above, the purpose of PCX Rule 6.40 is to prevent market makers who have financial arrangements with each other from unfairly dominating the market in any option issue or series, as prohibited by PCX Rule 6.37(c)(2). Unfair domination of the market, however, is prohibited by PCX Rule 6.37(c)(2) regardless of whether the parties involved have a "financial arrangement" with each other. The Exchange believes that the value of the current administrative process relating to exemptions is minimal with regard to assuring compliance with applicable

exemptions to Members on a case-by-case basis if it determines that a fair and orderly market would not be impaired by allowing such Members with financial arrangements to trade in the same trading crowd at the same time. In making such determinations, the Committee shall consider the following factors: (1) The nature of the financial arrangement; (2) the degree of independence to be maintained by the applicants in making trading decisions; (3) the impact on competition in the trading crowd if an exemption were granted; (4) the applicants' prior patterns of trading if they have previously traded in the same trading crowd at the same time; (5) and any other information relevant to whether the applicants would tend collectively to dominate the market in a particular trading crowd or a particular option series. The committee may revoke any long-term exemption granted pursuant to this subsection if it determines that a fair and orderly market would otherwise be impaired by a continuation of the exemption. The Committee will review, on at least an annual basis, all long-term exemptions that are in effect at the time.

¹¹ PCX Rule 6.40(b)(4)(B) provides:

Short-term Exemptions. Two Floor Officials may grant short-term exemptions to Members on a case-by-case basis if such Floor Officials determine that a fair and orderly market would not be impaired and that the need for liquidity in the trading crowd warrants such action. Unless otherwise specified, any exemption granted pursuant to this Rule shall extend for no longer than the trading day on which it is provided. The Committee shall review, on a regular basis, each exemption granted pursuant to this subsection (b).

¹² See PCX Rule 6.40, Commentary .01.

rules.¹³ The Exchange notes that it will continue to require members to submit detailed information on their financial arrangements to Exchange staff, as currently required.¹⁴ This will allow the Exchange to continue to conduct its surveillance and enforcement efforts relating to any fraudulent, manipulative, or other illegal trading practices by members with financial affiliations that may occur.

The Exchange believes that eliminating PCX Rule 6.40 is consistent with the important objective of allowing market makers and other PCX members to participate freely in trading crowds to provide maximum market depth and liquidity.¹⁵ The Exchange does not believe that floor officials' knowledge, based on the exemption process, of other members' financial arrangements helps to deter illicit trading practices.

The Exchange also believes that the restriction on LMMs in PCX Rule 6.40(b)(3)—i.e., the prohibition against more than one LMM representative simultaneously bidding, offering, or trading in the same option series without an exemption from floor officials—is unwarranted. If there is a large influx of orders in a particular option series, an LMM may reasonably need to have more than one of its traders in the same trading crowd simultaneously trading that series.¹⁶ The Exchange does not believe that

¹³ In that regard, the Exchange notes that it has not identified domination of the market in violation of PCX Rule 6.37(c)(2), wash sale trade violations, or any other violations as a result of the application of PCX Rule 6.40.

¹⁴ See PCX Rule 4.18(a), which provides in part:

(a) A Market Maker, Floor Broker, Specialist or Member Organization who enters into a financial arrangement with any other person or entity shall disclose to the Exchange the identity of such person or entity and the terms of the arrangement. For the purposes of this rule, a financial arrangement is defined as:

- (1) The direct financing of a Member's dealings upon the Exchange; or
- (2) Any direct equity investment or profit sharing arrangement; or
- (3) Any consideration over the amount of \$5,000.00, including, but not limited to, gifts, loans, annual salaries or bonuses.

(b) Exchange Members with financial arrangements must submit to the Exchange notification of the initiation, modification or termination of such financial arrangements in a form, time and manner approved by the Exchange within ten business days of the effective date of such arrangements or within such shorter period of time as the Exchange may require. Failure to disclose the terms of such financial arrangements to the Exchange may result in disciplinary action.

¹⁵ The Exchange believes that no other options exchange has a rule that prohibits affiliated members from trading in the same crowd without an exemption.

¹⁶ The Exchange notes that the current restriction on trading in the same series previously applied to all market makers with common financial arrangements. See Exchange Act Release No. 32775 (August 20, 1993), 58 FR 45368 (August 27, 1993).

there is a compelling reason to require the LMM to obtain an exemption from floor officials under these circumstances.

e. *New Provisions on Joint Accounts.* PCX Rule 6.85 currently provides that a market maker and any orders represented by a floor broker on behalf of the market maker may not be concurrently represented at a trading post. This principle against dual representation of a market maker account has been extended to cover joint accounts, as currently provided in PCX Rule 6.84, Commentary .04.¹⁷ The Exchange is now proposing to adopt supplemental procedures that apply to situations where a joint account is being concurrently represented by more than one market maker representative, and to situations where a joint account is being represented by a floor broker.¹⁸

Specifically, the Exchange is proposing to add new subsection (h) to PCX Rule 6.84, its current rule on joint accounts. Subsection (h)(1) of the proposed PCX Rule 6.84 states that a joint account may be simultaneously represented in a trading crowd only by participants who are trading in-person. It further provides that orders for a joint account may not be entered in a trading crowd in which a participant of the joint account is trading in-person for the joint account. If no participant is trading in-person in the trading crowd for the joint account, then a floor broker may represent orders in the trading crowd on behalf of the joint account as long as the same option series is not concurrently represented by more than one floor broker.

Subsection (h)(2) of proposed PCX Rule 6.84 provides that market makers may alternate trading in-person between their individual and joint accounts while in the trading crowd. It further provides that market makers who alternate trading between accounts must ensure that while trading the joint account another participant does not

enter orders through a floor broker for the joint account in the same trading crowd.

Subsection (h)(3) of proposed PCX Rule 6.84 provides that before beginning trading on behalf of a joint account, participants in the joint account are responsible for determining whether any floor brokers are representing orders in the same trading crowd on behalf of the same joint account.¹⁹

Subsection (h)(4) of proposed PCX Rule 6.84 provides that floor brokers may not represent a joint account of which they are a participant.

Subsection (h)(5) of proposed PCX Rule 6.84 provides that market makers who are trading in-person in a trading crowd may not enter orders with a floor broker either for joint accounts in which they are participants or for their individual accounts.

Subsection (h)(6) of proposed PCX Rule 6.84 provides that the following trades are prohibited: (a) Trades between a joint account participant's individual account and a joint account in which that person is a participant; (b) trades between two joint accounts having common participants; (c) trades in which the buyer and seller are representing the same joint account and are on opposite sides of the transaction.

Finally, the Exchange is proposing to make technical changes to PCX Rule 4.18 and PCX Rule 6.84 by removing cross-reference to PCX Rule 6.40.

The Exchange believes that the provisions of proposed PCX Rule 6.84 are reasonably designed to assure appropriate representation of joint accounts in the trading crowds, consistent with the PCX's current rules. In particular, the Exchange believes that proposed subsections (1) and (5) of PCX Rule 6.84 are consistent with the second and third sentences of current PCX Rule 6.84, Commentary .04, and with PCX Rule 6.85. Finally, the Exchange believes that the elimination of PCX Rule 6.40, in conjunction with the codification of new PCX Rule 6.84(h), will help to assure an appropriate balance between reasonable trading restrictions by joint account participants and the need to allow PCX members to participate freely in trading crowds to provide maximum depth and liquidity.

2. Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²⁰ in general and Section 6(b)(5)²¹ in particular because it is

designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

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.

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 proposed 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 PCX. All

¹⁷ This Commentary provides:

Any order of a joint account participant, which is executed by a Floor Broker, shall be in accordance with procedures set forth in Rule 6.85, except that the joint account trading number with its alpha identification should appear in the 'executing firm' area. Additionally, a joint account participant may not bid, offer, purchase, sell, or enter orders in an option series in which a Floor Broker holds an order on behalf of the joint account or for the proprietary account of another participant in the joint account. Orders of joint account participants in a particular option series may not be concurrently represented by one or more Floor Brokers.

¹⁸ The Exchange believes that these procedures are substantially the same as those set forth in Regulatory Circular RG-98-94 of the Chicago Board Options Exchange (Joint Account Participant Trading in Equity Options) (September 9, 1998), CCH ¶ 5291.

¹⁹ Cf. PCX Rule 6.85, Commentary .01 (similar requirement applicable to market makers).

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

submissions should refer to File No. SR-PCX-00-21 and should be submitted by January 12, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-32652 Filed 12-21-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43721; File No. SR-Phlx-00-32]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Rule 748, Supervision

December 13, 2000.

On July 31, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 748, Supervision.³ On October 11, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.⁴ Notice of the proposed rule change, as amended, was published for comment in the **Federal Register**.⁵ No comments were submitted on the proposed rule change. This order approves the proposed rule change, as amended.

I. Description of the Proposal

The Exchange proposes to amend Rule 748, Supervision, in several respects. First, the proposed amendment to Rule 748 would expand the definition of who must be supervised to include employees and associated persons of members, member organizations, participants, or participant organizations. The proposed

amendment to Rule 748 would also require that all offices, locations, departments, and business activities of members, member organizations, participants, and participant organizations ("members and related organizations") be supervised.

Second, the proposed amendment to Rule 748 would add a requirement for periodic compliance reviews and office inspections. Members and related organizations for which the Exchange is the Designated Examining Authority ("DEA") would have to conduct compliance meetings with their personnel at least on an annual basis. In addition, members and related organizations for which the Exchange is the DEA would have to conduct office inspections according to an inspection cycle established in their written supervisory procedures.

Third, the proposed amendment to Rule 748 would require that members and related organizations have written supervisory procedures that set forth the specific supervisory system and other essential information regarding supervisory personnel.

Fourth, the proposed amendment to Rule 748 would contain standards for supervision and for written supervisory procedures. Written supervisory procedures and the system for applying such procedures would have to be reasonably designed to prevent and detect, insofar as practicable, violations of the applicable securities laws and regulations, including the by-laws and rules of Exchange. A similar standard for supervision would be applicable to those entrusted with the duty to supervise others.⁶

II. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,⁷ which require, among other things, that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with respect to facilitating transactions in securities, 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.⁸

The Commission believes that the Exchange's proposal to expand the definition of who must be supervised is reasonable and will help to enhance the ability of the members and related organizations to adequately monitor and enforce supervision within their organizations.

The Commission also believes that the Exchange's proposal to add requirements for periodic compliance reviews and office inspections will strengthen the ability of the members and related organizations to carry out their compliance and surveillance functions.

Lastly, the Commission believes that the Exchange's proposal to require that members and related organizations have written supervisory procedures, setting forth the specific supervisory system and other pertinent information, as well as requiring that standards are implemented for supervision and written supervisory procedures, will help to ensure that members and related organizations carry out their supervisory responsibilities efficiently, particularly over branch offices of member firms conducting business away from the floor of the Exchange.

III. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-Phlx-00-32), as amended, be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-32650 Filed 12-21-00; 8:45 am]

BILLING CODE 8010-01-M

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Exchange Rule 748, which is generally based on NYSE Rule 342, was originally filed in 1993 and amended once in 1994. See Securities Exchange Act Release Nos. 33303 (Dec. 8, 1993), 58 FR 65609 (Dec. 15, 1993) and 34842 (Oct. 14, 1994), 59 FR 53002 (Oct. 20, 1994).

⁴ See Letter from Jurij Trypupenko, Director of Litigation and Operations, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (October 11, 2000). Amendment No. 1 corrected structural errors that appeared in the proposed rule language.

⁵ Securities Exchange Act Release No. 43407 (Oct. 20, 2000), 65 FR 64469 (Oct. 27, 2000) (SR-Phlx-00-32).

⁶ The standard for supervision and standard for written supervisory procedures found in the proposed rule change are based generally on Section 15(b)(4)(E)(i) of the Act. 15 U.S.C. 78o(b)(4)(E)(i).

⁷ 15 U.S.C. 78f(b)(5).

⁸ In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).