

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether it 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 submissions should refer to File No. SR-PCX-00-36, and should be submitted by May 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44149; File No. SR-PCX-00-47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Adopting Formal Procedures for Members to Submit Proposals to List Option Classes on the Exchange

April 4, 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 December 13, 2000, the Pacific Exchange, Inc. ("PCX" 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 have been prepared by the PCX. The PCX submitted

Amendment Nos. 1³ and 2⁴ to the proposed rule change on February 13, 2001 and March 14, 2001, respectively. 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

The PCX is proposing procedures for member organizations to propose initial options listing. The text of the proposed rule change is set forth below. All language is being added.

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Listing Proposals

3.8. A member organization seeking to propose an option listing in the Options Listing Committee ("OLC") must execute and deposit a Listing Request Form in the Options Allocation Box by 11:00 a.m. on a daily basis. Listing Request Forms placed in the Options Allocation Box after 11:00 a.m. will be considered on the following day. Once the request is made the PCX staff will:

(a) Confirm in writing the underlying issue of the options request meets all the requirements set forth in PCX Rule 3.6;

(b) Present the issue for listing consideration at the next scheduled OLC meeting. In making its determination the OLC will apply the qualitative and quantitative criteria set forth in Regulatory Bulletin Options 01-08; and

(c) Provide a written response to the requesting member organization within ten business days of the date of the request, (i) setting forth the basis on which any denial or placement of limitation or condition was made; or (ii) indicating that the denial or placement of limitation or condition is due to other bona-fide business reasons which are specifically documented and maintained in the OLC minutes.

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³ On February 13, 2001, the PCX submitted a new Form 19b-4, which replaces and supersedes the original filing in its entirety ("Amendment No. 1").

⁴ See letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 13, 2001 ("Amendment No. 2"). Amendment No. 2 revises proposed PCX Rule 3.8(c) to require the Exchange to provide a written response within 10 days to the requesting member specifying that a denial or placement of limitations or conditions is due to other bona fide business considerations that are specifically documented and maintained in the minutes of the Exchange's Options Listings Committee.

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 PCX proposes to adopt new PCX Rule 3.8 to provide procedures for member organizations to propose the listing of options on the Exchange.⁵ The proposed rule would require a member organization proposing an option listing to the Options Listing Committee ("OLC") to execute and deposit a Listing Request Form in the Options Allocation Box by 11:00 a.m. on a daily basis.⁶ Once the request is received, the PCX staff would: (i) Confirm that the underlying issue of the listing request meets all the requirements set forth in PCX Rule 3.6; (ii) present the issue for listing consideration at the next scheduled OLC meeting; and (iii) provide a written response, setting forth the basis for the denial or placement of limitations or conditions, to the requesting member organization within ten business days of the date of the request. Regulatory Bulletin Options 01-08 ("RBO 01-08") sets forth in detail the qualitative and quantitative procedures that the OLC would follow in making a listing determination.⁷ As

⁵ As part of a settlement of an enforcement action by the Commission, four of the options exchanges, including the PCX, are required to adopt rules to codify listing procedures to be carried out when a member or member organization requests the exchange to list options not currently trading on the exchange. See Order Instituting Public Administration Proceeding Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000), and Administrative Proceeding File 3-10282.

⁶ Proposals received after 11:00 a.m. will be considered on the following day.

⁷ The quantitative factors to be considered by the OLC would include: (i) Six-month trading volume in the underlying issue; (ii) three-month average daily trading volume; (iii) total shares outstanding; and (iv) market capitalization. The qualitative factors would be: (i) operating and financial history; (ii) industry and competition; (iii) reputation of

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¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed, RBO 01-08 creates a formal process that: (i) Would disclose listing requirements set forth in PCX Rule 3.6; (ii) would specify quantitative and qualitative criteria considered by the OLC in evaluating listing candidates; (iii) would clarify procedures for submission of listing proposals; and (iv) would establish procedures for the reporting of OLC decisions to requesting members. The PCX believes that the proposed rule and guidelines would provide for a reasonable time frame for review and decision making on all listing proposals.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of section 6(b)(5),⁹ in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest by ensuring that all listing proposals are properly reviewed.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX did not solicit or receive 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 PCX consents, the Commission will:

(A) By order approve the proposed rule change, or

management; (iv) other significant developments that may be expected to materially affect the company and its shareholders; and (v) the Exchange's internal competitive objectives and system utilization concerns. The Exchange also may take notice of other bona-fide business considerations that will be documented and maintained in the OLC minutes.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

(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, as amended, 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 filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to the File No. SR-PCX-00-47 and should be submitted by May 4, 2001. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 44155; File No. SR-Phlx-01-09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adopting a Monthly Fee for Electronic Communication Networks

April 5, 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 31, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission")

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Phlx amended the proposed rule change on March 30, 2001.³ 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

The Phlx proposes to adopt a \$2,500 monthly fee, on a one year pilot basis,⁴ for electronic communications networks ("ECNs")⁵ that are member organizations and send order flow to the Exchange's equity trading floor. The proposed fee would apply to ECN trades where the ECN is not acting as a specialist or a floor broker, but rather an order flow provider. The proposed fee is in lieu of the equity transaction value charge that would normally apply to. The Phlx fee schedule is available at the Commission and at the Phlx.

II. Self-Regulatory Organization's Statements Regarding 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 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed fee is intended to attract equity order flow from ECNs to the Exchange by substituting a fixed

³ The Phlx submitted a new Form 19b-4, which replaces and supersedes the original filing in its entirety.

⁴ Thereafter, the Exchange may file to extend the fee, possibly only for ECNs that have achieved a certain average daily Phlx equity volume.

⁵ ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter ("OTC") market maker, and permits such orders to be executed against in whole or in part. The term ECN shall not include: Any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal. See SEC Rule 11Ac1-1(a)(5).