

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-33712 Filed 12-24-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39469; File No. SR-PCX-97-45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to ASAP Membership Requirements

December 19, 1997.

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 November 10, 1997,³ the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Exchange has designated this proposal as non-controversial pursuant to Rule 19b-4(e)(b) under the Act.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On November 3, 1997, the Exchange filed with the Commission a proposed rule change (PCX-97-42) containing the same substance as the present filing. That filing was submitted pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(6) thereunder. The filing was withdrawn on November 6, 1997. See letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Michael A. Walinskas, Division of Market Regulation, SEC, dated November 6, 1997. Regarding the present filing (PCX-97-45), on November 21, 1997, the Exchange filed Amendment No. 1 with the Commission. Amendments No. 1 constitute a substantive change in the proposal in that it redesignates the proposal as a "non-controversial" rule filing under Rule 19b-4(e)(6) rather than Rule 19b-4(e)(5). See letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Victoria Berber-Doumar, Division of Market Regulation, Commission, dated November 21, 1997. On December 17, 1997, the Exchange filed Amendment No. 2 with the Commission. Amendment No. 2 modified the text of the rule to clarify the proposed change.

⁴ The Exchange has represented that the proposed rule change will not significantly affect the protection of investors or the public interest, and will not impose any significant burden on competition. See, letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Victoria Berber-Doumar, Division of Market Regulation, SEC, dated December 17, 1997.

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

PCX is proposing to amend its rules on Automated System Access Privilege ("ASAP") Memberships.⁵ The text of the proposed rule change is available at the Office of Secretary, Amex, and at 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 self-regulatory organization included statements concerning the purpose of the 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 self-regulatory organization 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 modify Rule 1.14 in two respects. First, Rule 1.14(a)(3) currently provides that telephone access is prohibited to ASAP Members, except by special exemption granted by the Board of Governors. The Exchange is proposing to eliminate this provision, so that ASAP Members may place orders over the telephone with Floor Brokers without first obtaining an exemption from the Board of Governors.

Second, the Exchange is proposing to add a provision to Rule 1.14 stating that at least 80% of an ASAP Member's total PCX trade (per calendar quarter) and at least 80% of an ASAP Member's total PCX volume (per calendar quarter) must be executed electronically through POETS on P/COAST. The 80% requirements will apply to option contracts and equity securities individually. The proposed rule further states that the Board of Governors may

⁵ ASAP Memberships are governed by PCX Rule 1.14. Rule 1.14 sets for the terms and conditions of the Exchange's program for Electronic Access Membership. The rule provides that ASAP Members must be registered broker-dealers subject to the Exchange's disciplinary jurisdiction, and must pay an annual fee. The Rule further provides that such Members are entitled to access to Pacific Computerized Order Access System ("P/COAST"), Pacific Options Exchange Trading System ("POETS"), and other systems approved by the Board of Governors.

grant exemptions to the 80% requirements on a case-by-case basis.

Currently, under PCX Rules. 1.14(a)(3) and (1)(5), as ASAP Member may receive access to P/COAST and POETS (and other systems approved by the Board of Governors), but may not have telephone access to the Trading Floors without and exemption from the Board of Governors. Thus, currently, the only orders that an ASAP Member may send directly to the Trading Floors are orders entered electronically (unless and exemption has been granted). The rule change will codify a limited exemption to the current requirement that, in general ASAP Members may only enter orders electronically. Specifically, it will allow up to 20% of an ASAP Member's PCX orders to be executed by telephone. The Exchange believes that codifying this limited exemption will make the ASAP Membership program more attractive to investors and thus will promote a greater use of electronic entry orders on the Exchange. It will also assure that Members holding "electronic" memberships are entering the vast majority of their PCX trades electronically.

The Exchange believes the proposal will make the Exchange's program for electronic membership more viable, and as such, will allow the Exchange to be more competitive in attracting order flow to the Exchange.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it is designed to facilitate in securities and promote just and equitable principles of trade.

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.

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

Written comments on the proposed rule change were neither solicited nor received.

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

The Exchange has asserted that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of

this filing. The proposed rule change was originally submitted to the Commission on November 11, 1997. However, the submission of substantive Amendments No. 1 and No. 2 on November 21, and December 17, 1997, respectively, delay the statutorily required implementation date to January 16, 1998.⁶ For the foregoing reasons the rule filing will become operative as a "non-controversial" rule change pursuant to Rule 19b-4(e)(6) under the Act.⁷

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-97-45 and should be submitted by January 20, 1998.

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

⁶ The Commission notes that any substantive amendment to a proposed rule change filed under Section (e)(6) of Rule 19b-4 causes the 30 day delayed implementation period to be restarted from the date of the filing of the amendment. In addition, the Commission has waived the requirement that the Exchange notify the Commission of its intent to file this proposed rule change five business days prior to the filing. See Securities Exchange Act Release No. 35123 (December 20, 1994), 59 FR 66692 (December 28, 1994).

⁷ 17 CFR 240.19b-4(e)(6).

⁸ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-33714 Filed 12-24-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39466; File No. SR-PHLX 97-49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc., Relating to Exchange Approval of Member Advertising

December 18, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 13, 1997, 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 self-regulatory organization ("SRO"). On December 15, 1997, the Exchange filed Amendment No. 1 to the rule proposal. 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

Pursuant to Rule 19b-4 of the Act, the PHLX proposes to amend Phlx Rule 605 to require member or foreign currency option participant organizations for which the Phlx is the designated examining authority ("DEA"): (1) To receive Exchange consent prior to using the Internet to provide market quotations or to advertise to the general public; (2) to receive prior Exchange consent before making use of radio or television broadcasts for any business purpose or broadcasting Exchange quotations on radio or television programs or via public telephone reports; and (3) to submit the text of all commercials or program materials about securities or investing sponsored by the firm on radio, television, public telephone or on the Internet, promptly following the program in which it was used. Further, the commentary to the rule which states that the provisions of the rule do not apply to advertisements, market letters and sales literature relating to options as defined in Rule 1049 would be deleted so that the rule would apply to all products traded on the Exchange, including options. The

Exchange filed Amendment No. 1 to make clear that print advertisements are also subject to prior Exchange review and approval under the new proposed language of PHLX Rule 605. The Amendment changed the proposed new language of the rule to reflect this change. The text of the proposed rule change, as amended, is below. Brackets represent deletions; italics represent additions.

Rule 605

Advertisements, Market Letters, Research Reports and Sales Literature

(a) No member, foreign currency option participant, member organization or foreign currency option participant organization shall issue any advertisement, market letter, research report, telemarketing script or sales literature unless such member, foreign currency option participant or a general partner or holder of voting stock in such organization shall have endorsed his approval prior to publication or distribution thereof on an exact copy thereof bearing the name of the person who wrote such material. Such copy so endorsed shall be made part of the permanent records of such member or foreign currency option participant organization and shall be retained for three years, two years in an easily accessible location.

(b) *Member or foreign currency option participant organizations for which the Exchange is the designated examining authority ("DEA") desiring to broadcast Exchange quotations on radio or television programs, or in public telephone market reports, or make use of radio or television broadcast or print advertising for any business purpose, or to make use of the Internet for the purpose of providing market quotations or advertising to the general public must first obtain the consent of the Exchange by submitting an outline of the program material to the Exchange.*

(c) *The text of all commercials, advertisements and program material (except lists of market quotations) about securities or investing sponsored by Exchange designated member or foreign currency option participant organizations on radio, television, or public telephone reports, or on the Internet, or program material supplied to these media must be sent to the Exchange promptly following the program in which it is used.*

[Commentary: The provisions of this rule do not apply to advertisements, market letters and sales literature relating to options as defined in Rule 1049.]

Supplementary Material: No change.