

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

**1. Purpose**

On November 17, 1997, the Exchange submitted the proposed rule change, proposing to amend NYSE Rule 500, which states the procedures a NYSE-listed company must follow before voluntarily delisting its securities from the Exchange. On December 3, 1997, the Exchange submitted Amendment No. 1 to the proposed rule change to the Commission. The amended proposal was published for comment in the **Federal Register** on December 10, 1997.<sup>3</sup>

NYSE Rule 500 currently requires holders of 66 percent of a security to approve a company's decision to delist the company's securities from the Exchange, with less than ten percent of the individual holders objecting to the delisting. As originally proposed, the amended rule would have permitted a domestic issuer to delist stock if it obtained the approval of: (1) A majority of the company's full board of directors; and (2) the company's audit committee. The issuer then would have been required to provide shareholders with between 45 and 60 calendar days' notice of the delisting. A non-U.S. issuer would have had to obtain board approval to delist its stock. A non-U.S. issuer also would have had to provide holders with reasonable notice of its intention to delist, which would have required the issuer to send written notice to U.S. holders and to follow home-country practice to provide notice to non-U.S. holders.

In response to the Commission's request for comment on the original proposal, the Commission received a number of comments both for and against the proposal. In response to those comments and discussions with Commission staff, the Exchange now proposes the following amendments to the original proposal:

- Permit approval by a company's board of directors according to applicable state law requirements on majority votes (generally the majority of a quorum), rather than requiring approval by a majority of the entire board. The Exchange would continue to require audit committee approval.
- Amend the notice provision to require U.S. companies to provide actual written notice to no less than 35 of their largest record holders (rather than all holders). A foreign issuer would

have to provide such notice to its 35 largest U.S. shareholders.

- Require both U.S. and foreign companies to issue a press release to inform shareholders generally of the proposed delisting.
- Shorten the minimum waiting period from 45 calendar days to 20 business days, and change the maximum waiting period from 60 calendar days to 60 business days, with the ability of companies to extend the period, subject to approval by the Exchange.

The Exchange believes that new Rule 500, as proposed to be amended, will continue to provide investors with adequate procedural protections in the delisting process while providing listed companies with greater flexibility in this area.

**2. Statutory Basis**

The Exchange believes Amendment No. 2 to the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,<sup>4</sup> which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposal 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*

In adopting the original proposal to amend Rule 500, the Exchange consulted with numerous Board and advisory committees, pension funds and other Exchange constituents. The Exchange also has informally discussed the current proposals with various of these constituencies.

**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 Amendment No. 2, including whether Amendment No. 2 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. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-97-31 and should be submitted by December 18, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 98-31582 Filed 11-25-98; 8:45 am]

BILLING CODE 8010-01-M

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-40686; File No. SR-PCX-98-52]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Amendments to Rule 2.6(e) on the Prevention of the Misuse of Material, Nonpublic Information**

November 18, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

<sup>3</sup> Securities Exchange Act Release No. 39394 (December 3, 1997) 62 FR 65116.

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 17 CFR 200.30-3(a)(12).

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 5, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange.<sup>3</sup> 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 Exchange is proposing to amend Rule 2.6(e) to modify and clarify its current guidelines established for the prevention of the misuse of material, non-public information by members and member organizations for whom the PCX is the Designated Examining Authority ("DEA"). Below is the test of the proposed rule change. The proposed new language is italicized and the deleted language is bracketed.

\* \* \* \* \*

¶ 3369

#### Prevention of the Misuse of Material, Nonpublic Information

RULE 2.6(e) Every member or member organization must [shall] establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the member or member organization's business, to prevent the misuse of material, non-public information by such member or member organization or persons associated with such member or member organization. Members or member organizations for whom the Exchange is the Designated Examining Authority ("DEA") that are required, pursuant to Rule 2.6, to file SEC Form X-17A-5 with the Exchange on an annual or more frequent basis must [shall] file contemporaneously with [those] the submissions for the calendar year end [attestations signed by such members] ITSFEA compliance acknowledgments stating that the procedures mandated by this Rule have been established, enforced and maintained. Any member or member organization or associated person who becomes aware of a possible misuse of material, non-public information must promptly notify the Exchange's Equities or Options Surveillance Department.

*Commentary.*

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

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

<sup>3</sup> The PCX filed an amendment to the proposed rule change. See Letter from Robert Pacileo, Jr., Staff Attorney, PCX, to Kathy England, Assistant Director, Division of Market Regulation, Commission, dated October 29, 1998 ("Amendment No. 1"). The substance of Amendment No. 1 is incorporated into this Notice.

.01 For purposes of Rule 2.6(e), conduct constituting the misuse of material, non-public information includes, but is not limited to, the following:

A. T[t]rading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer; or

B. T[t]rading in a security or related options or other derivative securities, while in possession of material non-public information concerning imminent transactions in the security or related securities; [and] or

C. D[d]isclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

.02 The terms "associated person" and "person associated with a member or member organization" mean anyone who directly is engaged in the member or member organization's trading-related activities, including General [any] partners, officers, directors, [or branch] managers [of a member] (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling, controlled by, or under common control with a member, or any employee of the [a] member or member organization.

For the purposes of this Rule, the term "employee" includes every person who is compensated directly or indirectly by the member or member organization for the solicitation or handling of business in securities, including individuals trading securities for the account of the member or member organization, whether such securities are dealt in on an exchange or are dealt over-the-counter.

.03 Rule 2.6(e) [requires] provides that [, at a minimum,] each member or member organization for which the Exchange is the DEA should establish, maintain, and enforce [the following] written policies and procedures similar to the following, as applicable:

A. All associated persons must be advised in writing of the prohibition against the misuse of material, non-public information; and

B. All associated persons of the member or [Each] member organization [and all persons associated with that member organization] must sign attestations affirming their awareness of, and agreement to abide by the aforementioned prohibitions. These signed attestations must be maintained for at least three years, the first two years in an easily accessible place; and

C. Each member or member organization must receive and re[main]tain copies of trade confirmations and monthly account statements for each account in which an associated person: [(1)] has a direct or indirect financial interest [,] or [(2)] makes investment decisions. [These account statements and trade confirmations must be maintained for at least three years, the first

two years in an easily accessible place.] The activity in [S]such brokerage accounts should [must] be reviewed at least quarterly by the member or member organization for the express purpose of detecting the possible misuse of material, non-public information; and

D. All associated persons must disclose to the member or member organization whether they, or any person in whose account they have a direct or indirect financial interest, or make investment decision, [is] are an officer, director or 10% shareholder in a company whose shares are publicly traded. Any transaction in the stock (or option thereon) of such company shall be reviewed to determine whether the transaction may have involved a misuse of material non-public information. [( "Eligible members" are member organizations and sole PSE members that do not carry or introduce customer accounts and for whom the Exchange is the Designated Examining Authority ("DEA").]

Maintenance of the foregoing policies and procedures may not, in all cases, satisfy the requirements and intent of Rule 2.6(e). The adequacy of each member or member organization's policies and procedures will depend upon the nature of each member or member organization's business.

.04 [The Exchange has developed sample forms, denominated as the "ITSFEA Compliance Procedures" (in reference to the Insider Trading and Securities Fraud Enforcement Act of 1998), that may be used by certain eligible member organizations to facilitate their compliance with the filing and record-keeping requirements of Rule 2.6(e). Use of these forms does not create a presumption by the Exchange that any particular member has satisfied the requirements of this Rule.] An Exchange member who is solely a lessor of a membership and is not registered and not required to register as a broker-dealer under Section 15 of the Exchange Act is not subject to the requirement of Exchange Rule 2.6(e) concerning the establishment, maintenance, and enforcement of written policies and procedures respecting the misuse of material, non-public information.

\* \* \* \* \*

### 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 test of these statements may be examined at the placed specified in Item IV below. 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*

**Purpose**

**Background:** In November 1988, Congress enacted the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA"), designed to prevent, deter, and prosecute insider trading. ITSFEA requires broker-dealers to maintain written procedures reasonably designed to prevent the misuse of material, non-public information by broker-dealer or any person associated with them.<sup>4</sup> ITSFEA also provides for penalties of up to \$1 million or three times the amount gained or amount of loss avoided, whichever is greater, for the misuse of material non-public information.<sup>5</sup> ITSFEA clearly anticipates liability where written procedures have not been established or have not been enforced. In December 1992, the Commission approved a PCX proposal to adopt new Rule 2.6(e) relating to the establishment, maintenance and enforcement of procedures designated to prevent the misuse of material non-public information.<sup>6</sup> The Commission also approved similar proposals of other self-regulatory organizations relating to ITSFEA requirements.<sup>7</sup>

**Proposal:** The Exchange is proposing to modify its Rule 2.6(e) to clarify the guidelines established for the prevention of the misuse of material, non-public information by members and member organizations for whom the PCX is the DEA. Currently, the rule states: "Members that are required, pursuant to Rule 2.6, to file SEC Form X-17A-5 with the Exchange on an annual basis shall file contemporaneously with those submissions attestations signed by such members stating that the procedures mandated by this Rule have been established, enforced and maintained." The proposed rule change would state that only those organizations for which the Exchange is the DEA are required to

file ITSFEA compliance acknowledgments stating that the procedures mandated by this rule have been established, enforced and maintained. In that regard, the rule change will codify the existing practices of the Exchange.

The Exchange also proposes to modify the definition of "associated person" in Rule 2.6(e). The current rule defines associated person as "any partner, officer, directors or branch manager of a member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by or under common control with a member, or any employee of a member." The Exchange is proposing to change the definition to "anyone who directly is engaged in the member or member organization's trading-related activities, including general partners, officers, directors, managers (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by or under common control with a member, or any employee of the member or member organization." The rule change would exclude limited partners from this definition, unless such limited partners are directly involved in the member organization's trading-related activities. The Exchange believes that the current requirement, which covers limited partners who are not directly involved in the member organization's trading-related activities, goes to far because it would impose unnecessary affirmative obligations on PCX members. For example, if a floor trader's grandmother, who lives across the country, is a small investor in that trader's market making operation, under the current rule, the trader would be required to review his grandmother's securities account statements pursuant to Commentary .03(C), which the Exchange believes would be an unreasonable requirement.

The Exchange further proposes to define "employee" as "every person who is compensated directly or indirectly by the member or member organization for the solicitation or handling of business in securities, including individuals trading securities for the account of the member or member organization, whether such securities are dealt in on the exchange or dealt over-the-counter."<sup>8</sup> Thus,

<sup>8</sup> The Commission approved a similar definition that the Philadelphia Stock Exchange proposed in 1997. See Securities Exchange Act Release No. 39178 (October 1, 1997), 62 FR 52804 (October 9, 1997).

independent contractors<sup>9</sup> as well as actual employees will be subject to the requirements of the rule.

The Exchange proposes to delete superfluous language regarding record keeping in Commentary .03 of Rule 2.6(e). In Commentary .03(C), the Exchange proposes to delete language that reads "These account statements and trade confirmations must be maintained for at least three years, the first two years in an easily accessible place." The Exchange believes this language is superfluous given requirements under Rule 17a-3 of the Act. Specifically, Rule 17a-3 sets requirements for records to be made by certain Exchange Members, Brokers and Dealers and would require the members or member organizations to maintain account statements and trade confirmations.

Finally, the Exchange proposes to clarify that an Exchange member who is a lessor of a membership, and is not registered and required to register as a broker-dealer under Section 15 of the Act, is not subject to the requirements of Exchange Rule 2.6(e) concerning the establishment, maintenance and enforcement of written policies and procedures respecting the misuse of material, non-public information. A lessor of a membership that is not registered as a broker-dealer under section 15 of the Act cannot engage in trading operations and is therefore not required, pursuant to Rule 2.6, to file SEC Form X-17A-5 with the Exchange.

**Basis**

The Exchange believes the proposed rule change is consistent with section 6(b)<sup>10</sup> of the Act, in general, and furthers the objectives of section 6(b)(5),<sup>11</sup> in particular, because it is designed to perfect the mechanisms 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.

<sup>9</sup> See, e.g., Letter from Douglas Scarff, Director, Division of Market Regulation, SEC to Gordon S. Macklin, President, National Association of Securities Dealers, Inc., dated June 18, 1982 (clarifying the status of independent contractors under the Act).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>4</sup> 15 U.S.C. 78o(f).

<sup>5</sup> 15 U.S.C. 78u-1.

<sup>6</sup> See Securities Exchange Act Release No. 33171 (November 9, 1993), 58 FR 60892 (November 18, 1993) (SR-PSE-92-20).

<sup>7</sup> See Securities Exchange Act Release No. 30597 (April 16, 1992), 57 FR 14855 (April 23, 1992) (SR-Phlx-91-47); Securities Exchange Act Release No. 33008 (October 4, 1993), 58 FR 52518 (October 8, 1993) (SR-Phlx-93-36); Securities Exchange Act Release No. 30557 (April 6, 1992) 57 FR 13393 (April 16, 1992) (SR-CBE-91-14); Securities Exchange Act Release No. 33937 (April 20, 1994), 59 FR 22030 (April 28, 1994) (SR-CBOE-93-58). See also New York Stock Exchange Rule 342.

*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**

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 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. 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 provision 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 SR-PCX-98-52 and should be submitted by December 18, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 98-31586 Filed 11-25-98; 8:45 am]

**BILLING CODE 8010-01-M**

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

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-40685; File No. SR-Phlx-98-48]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Listing and Trading Options on The Street.com Internet Index**

November 17, 1998.

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 23, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

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

The Phlx proposes to list and trade European-style, cash-settled options on The Street.com Internet Index ("Index"),<sup>3</sup> an equal dollar-weighted, A.M.-settled, narrow-based index of 20 small to mid-size companies by capitalization that are involved in Internet software, computer data security, and consulting services.<sup>4</sup> The Phlx is filing this proposal pursuant to Phlx Rule 1009(A), which provides for the commencement of trading of options on the Index 30 days after the date of the filing. The Phlx believes that this proposal is in compliance with Phlx Rule 1009(A) and the standards

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

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

<sup>3</sup> The Phlx pre-filed the Index with the Commission in August 1998. The pre-filing was submitted in accordance with the Generic Index Approval Order, *infra* note 5. Subsequent to the pre-filing, the Exchange renamed the Phlx Internet Growth Index as The Street.com Internet Index. The Street.com, Inc. does not guaranty the accuracy or completeness of the Index, makes no express or implied warranties with respect to the Index and shall have no liability for any damages, claims, losses or expenses caused by errors in the Index calculation. The Exchange represents that it will have sole discretion over the calculation of the Index.

<sup>4</sup> Since the pre-filing, the Phlx represented to the Commission that nothing has changed with the Index, including the stocks selected for the Index; only the name of the Index was changed. Telephone conversation between Nandita Yagnik, Counsel, Phlx, and Joseph Corcoran, Division of Market Regulation, Commission on November 12, 1998.

approved in the Generic Index Option Approval Order ("Generic Index Approval Order").<sup>5</sup>

**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 these statements may be examined at the places specified in Item IV below. 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 purpose of the proposal is to list for trading European style, cash-settled options on The Street.com Internet Index, a new index developed by the Exchange pursuant to Phlx Rule 1009A(b) in accordance with the Generic Index Approval Order for the listing and trading of narrow-based index options. Options on The Street.com Internet Index will provide an important hedging vehicle for basket traders who engage in trading securities that comprise this subsector of the computer industry.

The following is a more detailed description of the proposed Index options:

*Ticker Symbol:* DOT

*Settlement Value Symbol:* DOS

*Underlying Index:* The Street.com

Internet Index is an equal dollar-weighted index composed of 20 stocks involved in Internet software, computer data security, and consulting services that are traded on the New York Stock Exchange ("NYSE") and Nasdaq Stock Market ("Nasdaq"), and are therefore, reported securities as defined in Rule "11Aa3-1 under the Act. Further, all of the stocks presently meet the Exchange's listing criteria for equity options contained in Exchange Rule 1009 and are currently the subject of

<sup>5</sup> See Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 9, 1994) (order approving File Nos. SR-Amex-92-35; SR-CBOE-93-59; SR-NYSE-94-17; SR-PSE-94-07; and SR-Phlx-94-10). The Generic Index Approval Order established generic listing standards for options on narrow-based indexes and adopted streamlined procedures for introducing trading in options satisfying the generic listing standards.