

Exchange Act Rule 15c3-1 and the adequacy of the firm's procedures for supervising its financial and operational functions.

NASD Regulation requested, but did not receive, comment on several issues in NTM 99-67. NASD Regulation has determined to retain the safe harbor numbers as proposed in the Notice. However, NASD Regulation has determined that the definition of disciplinary history should be amended to include violations by officers or principals of the member. NASD Regulation also has determined that restrictions in a membership agreement should not automatically sunset after a fixed period (*e.g.*, five years) if the applicant does not have any disciplinary history; instead, restrictions will continue to be individually reviewed. Finally, NASD Regulation determined that it should clarify what happens if a change in ownership is denied and has proposed Rule 1017(k) to address this situation.

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, N.W., Washington, D.C. 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 NASD. All submissions should refer to File No. SR-NASD-99-67 and should be submitted by July 3, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42890; File No. SR-PCX-00-11]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change To Rescind Rules 5.43-5.49, and Modify Rule 5.5(b), Relating to the Exchange's Off-Board Trading Restrictions

June 1, 2000.

I. Introduction

On March 26, 2000, the Pacific Exchange, Inc. ("PCX" 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 rescind Rules 5.43-5.49, the Exchange's off-board trading rules, and to make a conforming change to Rule 5.5(b). The proposed rule change was published for comment in the **Federal Register** on April 19, 2000.³ Similar proposed rule changes filed by the American Stock Exchange, Chicago Stock Exchange, the Philadelphia Stock Exchange, and the Boston Stock Exchange had already been published for public comment.⁴ The Commission received no comments on any of these proposals. Today, in separate orders, the Commission is approving the proposed rule changes to rescind off-board trading

rules filed by the exchanges noted above.⁵

II. Description of the Proposal

Exchange Rules 5.43-5.49 restrict a member's ability to effect transactions in Exchange-listed securities off a national securities exchange. In the proposing release, the Exchange stated that "once the Commission approves the NYSE's proposal to rescind its off-board trading restrictions, the Exchange's off-board trading restrictions will no longer be necessary or appropriate." Therefore, the Exchange proposed to rescind Rules 5.43-5.49, and to make a conforming change to Rule 5.5(b).

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 a national securities exchange. In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act⁶ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act. The rescission of the Exchange's off-board trading restrictions is also consistent with Section 11A of the Act⁷ which sets forth the findings and objectives that are to guide the Commission in its oversight of the national market system. Specifically, rescinding the off-board trading restrictions will help further the national market system objective in Section 11A(a)(1)(C)(i) to assure the

⁵ The New York Stock Exchange was first to submit a proposed rule change rescinding its off-board trading rule, Rule 390. Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) ("NYSE Release").

On May 5, 2000, the Commission approved the New York Stock Exchange's proposed rule change to rescind Rule 390. Securities Exchange Act Release No. 34-42758 (May 5, 2000), 65 FR 30175 (May 10, 2000) ("NYSE Approval Order").

In the NYSE Release, the Commission also solicited the public's views on a broad range of issues related to market fragmentation—the trading of orders in multiple locations without interaction of those orders. The period for public comment on market fragmentation expired on May 12, 2000. The Commission currently is reviewing the comments submitted in response to the NYSE Release.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78k-1.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 42660 (April 10, 2000), 65 FR 21052.

⁴ Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618 (March 3, 2000) (File No. SR-Amex-00-05); Securities Exchange Act Release No. 42459 (February 25, 2000), 65 FR 11619 (March 3, 2000) (File No. SR-CHX-99-28); Securities Exchange Act Release No. 42458 (February 25, 2000), 65 FR 11628 (March 3, 2000) (File No. SR-Phlx-00-12); Securities Exchange Act Release No. 42661 (April 10, 2000), 65 FR 20497 (April 17, 2000) (File No. SR-BSE-00-02).

economically efficient execution of securities transactions, and in Section 11A(a)(1)(C)(ii) to assure fair competition between exchange markets and markets other than exchange markets.⁸

As discussed more fully in the NYSE Approval order, the existence of off-board trading restrictions can no longer be justified in an age when advancing technology and expanding trading volume are introducing new competitive challenges for the U.S. securities markets, both at home and abroad. Off-board trading rules such as Rules 5.43–5.49 directly restrict a certain type of market center competition—competition between exchange markets and markets other than exchange markets. Their rescission today eliminates an inappropriate regulatory burden on competition that runs contrary to the objectives set forth in the Act.

Off-board trading restrictions have been justified on the basis that they promote the interaction of investors' orders without participation by a dealer—indeed an objective set forth in the Act.⁹ The Commission believes, however, that whatever beneficial effect off-board trading restrictions such as Rules 5.43–5.49 may have in enhancing the interaction of investor orders can no longer justify their anticompetitive nature. To the extent off-board trading rules enhance order interaction, they do so in an undesirable way—by attempting a direct restriction on competition. Such attempts are never wholly successful and typically only distort, rather than eliminate, competition and introduce unnecessary costs ultimately borne by investors.

The outcome of competition between market centers should depend on which market centers are most able to serve investor interests by providing the highest quality trading services at the lowest possible prices; the Commission's regulatory task is removing unwarranted regulatory barriers to competition between market centers. As stated in the NYSE Approval Order, the rescission of off-board trading rules is "intended solely to free the forces of competition and allow investor interests to control the success or failure of individual market centers."¹⁰ The same rationale and motivation support the Commission's action today.

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

⁹Section 11A(a)(1)(C)(v) of the Act.

¹⁰NYSE Approval Order at 30179.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-PCX-00-11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42889; File No. SR-Phlx-00-12]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Ordering Approving Proposed Rule Change to Rescind Rule 132, the Exchange's Off-Board Trading Rule

June 2, 2000.

I. Introduction

On February 10, 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 rescind Rule 132, the Exchange's off-board trading rule. The proposed rule change was published for comment in the **Federal Register** on March 3, 2000.³ Proposed rule changes filed by the American Stock Exchange and the Chicago Stock Exchange to rescind their off-board trading rules were published on the same date as the Phlx proposing release.⁴ Shortly thereafter, the Boston Stock Exchange and the Pacific Exchange filed similar proposed rule changes.⁵ The Commission received no comments on any of these proposals. Today, in separate orders, the Commission is approving the proposed rule changes to

¹ 15 U.S.C. 78s(b)(2).

² 17 CFR 200.30-3(a)(12).

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ Securities Exchange Act Release No. 42458 (February 25, 2000), 65 FR 11628.

⁶ Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618 (March 3, 2000) (File No. SR-Amex-00-05); Securities Exchange Act Release No. 42459 (February 25, 2000), 65 FR 11619 (March 3, 2000) (File No. SR-CHX-99-28).

⁷ Securities Exchange Act Release No. 42661 (April 10, 2000), 65 FR 20497 (April 17, 2000) (File No. SR-BSE-00-02); Securities Exchange Act Release No. 42660 (April 10, 2000), 65 FR 21052 (April 19, 2000) (File No. SR-PCX-00-11).

rescind off-board trading rules filed by the exchanges noted above.⁶

II. Description of the Proposal

Exchange Rule 132 restricts a member's ability to effect transactions in Exchange-listed securities off a national securities exchange. In the proposing release the Exchange noted that the "staff of the Commission recently asked the Exchange to review its off-board trading restrictions and consider measures to repeal such restrictions." Therefore, the Exchange proposed rescinding Rule 132 to "broaden the free market trading activities of Exchange members and the investors they represent by removing restrictions on over-the-counter trading in listed securities."

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 a national securities exchange. In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act⁷ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act. The rescission of the Exchange's off-board trading restrictions is also consistent with Section 11A of the Act⁸ which sets forth the findings and objectives that are to guide the Commission in its oversight of the national market system. Specifically, rescinding the off-board trading

⁶ The New York Stock Exchange was first to submit a proposed rule change rescinding its off-board trading rule, Rule 390. Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) ("NYSE Release").

⁷ On May 5, 2000, the Commission approved the New York Stock Exchange's proposed rule change to rescind Rule 390. Securities Exchange Act Release No. 34-42758 (May 5, 2000), 65 FR 30175 (May 10, 2000) ("NYSE Approval Order").

⁸ In the NYSE Release, the Commission also solicited the public's views on a broad range of issues related to market fragmentation—the trading of orders in multiple locations without interaction of those orders. The period for public comment on market fragmentation expired on May 12, 2000. The Commission currently is reviewing the comments submitted in response to the NYSE Release.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78k-1.