

the proposed rule change become operative upon the date of filing with the Commission, October 16, 2000, in order to immediately implement these new revisions to its Guidelines. The proposed rule change and Amendment No. 1 to the proposed rule change are a "stated policy, practice or interpretation" concerned with the administration of NYSE Rules 35 and 37.

At any time within 60 days of the filing of the proposed rule change and Amendment No. 1 to the 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, including whether the proposed rule change and Amendment No. 1 to the proposed rule change are 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 NYSE. All submissions should refer to File No. SR-NYSE-00-43 and should be submitted by December 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43576; File No. SR-PCX-00-09]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Composition of the PCX Nominating Committee

November 16, 2000.

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 March 20, 2000, 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 and II below, which Items have been prepared by the Exchange. On October 17, 2000, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval to the proposed rule change.

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

The Exchange proposes to amend its Constitution to change the composition of the Nominating Committee to include public Governors and Equity Trading Permit ("ETP") Holders, Equity ASAP Holders, or Allied Persons of an ETP firm or an Equity ASAP Holder. The text of the proposed rule change follows. Additions are in *italics*; deletions are in [brackets].

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

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

<sup>3</sup> See letter from Cindy L. Sink, Senior Attorney, PCX to Nancy J. Sanow, Division of Market Regulation, Commission, dated October 16, 2000 ("Amendment No. 1"). In Amendment No. 1, the Exchange confirmed that the proposed change to the Constitution was approved by the PCX membership on January 27, 2000. Also, the Exchange revised the Purpose section of the filing to clarify that the proposed rule change is designed to assure a fair representation of its members in the selection of Governors. The Exchange also explained that the propose for eliminating the requirement of a minimum number of floor members on the Nominating Committee was to provide flexibility in the nominating process. Further, in Amendment No. 1, the Exchange made clear that, pursuant to the proposed rule change, only public Governors will be permitted on the Nominating Committee. In this regard, the Exchange represented that it will submit a revision to Art. III, Section 4(a) of the Constitution for membership vote by March 30, 2001 clarifying this point. The Exchange also made technical corrections to the proposal. Finally, in Amendment No. 1, the Exchange requested accelerated approval of the filing.

## ARTICLE III

\* \* \* \* \*

### 1206 Election of Nominating Committee

SEC. 4(a) At each annual meeting there shall be elected by the membership, by ballot, for a term of one year, a Nominating Committee of nine persons, one of whom shall be nominated as Chair[man] and one of whom shall be nominated as Vice Chair[man] who are eligible for election in accordance with Sec. 4(b) of this Article III, none of whom shall be [a Governor or] an officer of the Exchange. The Nominating Committee shall assume duties as provided in Sec. 4(d) of this Article III.

### 1211 Eligibility of Members of Nominating Committee

SEC. 4(b). The nine members of the Nominating Committee eligible to be elected at each annual meeting shall be as follows:

*At least one* [Not less than two] Committee member[s] shall be [floor members and] *a representative of the public.* *At least seven* Committee members shall be members or office members or office allied members [of the Exchange.], *Equity Trading Permit Holders, Equity ASAP Holders or Allied Persons of an ETP firm or an Equity ASAP Holder.*

#### 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 comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

Currently, Article III, Section 4(a) of the PCX Constitution states that at each annual meeting a Nominating Committee of nine persons shall be elected. No person elected to the Nominating Committee may be a Governor or an officer of the Exchange. The Exchange proposes to amend Section 4(a) to make Governors eligible for election to the Nominating

<sup>7</sup> 17 CFR 200.30-3(a)(12).

Committee. The Exchange interprets this proposed revision to mean that only public Governors will be permitted to be elected to sit on the Nominating Committee.<sup>4</sup>

The Exchange believes that by allowing public Governors to serve on the Nominating Committee, the requirement that at least one public representative serve on the Committee could be met by electing a public Governor. The Exchange proposes this change in an effort to potentially provide public representatives greater influence in the Board of Governors nomination process.

In addition, the Exchange proposes to change references in Article III, Section 4(a) to "Chairman" and "Vice Chairman" to "Chair" and "Vice Chair." The Exchange proposes this change to make the provisions gender-neutral.

Finally, the Exchange proposes to amend PCX Constitution, Article III, Section 4(b), entitled "Eligibility of members of Nominating Committee." Currently, this section states, "[t]he nine members of the Nominating Committee eligible to be elected at each annual meeting shall be as follows: Not less than two Committee members shall be floor members and seven Committee members shall be members or office members of office allied members of the Exchange." The Exchange is proposing to modify Section 4(b) in two respects.

First, with regard to the provision that not less than two Nominating Committee members shall be floor members, the Exchange is proposing to replace it with a new requirement that at least one Nominating Committee member shall be a representative of the public. Accordingly, under the proposal, there may be up to two public representatives on the Nominating Committee at a time, although there must always be at least one. The balance of seats on the Nominating Committee, which will be either seven or eight depending on the number of public representatives nominated at the time, shall be members, office members, office allied members, ETP Holders, Equity ASAP Holders, or allied persons of an ETP Firm or Equity ASAP Holder. The rule change eliminates the requirement that at least two floor members be represented on the Nominating Committee so that the Exchange will have the flexibility to meet its obligation

<sup>4</sup> The Exchange has represented that it intends to submit a revision to the Constitution for a membership vote that clarifies that the only Governors that may serve on the Nominating Committee are public Governors. See Amendment No. 1, *supra* note 3.

to have a fair representation of Exchange members.<sup>5</sup>

Second, as noted above, the Exchange is proposing to expand the list of members who may serve on the Nominating Committee to include ETP Holders, Equity ASAP Holders, or Allied Persons of an ETP Firm or Equity ASAP Holder. These changes are intended to expand the list of eligible committee members to include new types of members of PCX Equities, Inc.<sup>6</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Act, in general, and further the objectives of Section 6(b)(5),<sup>8</sup> in particular, because they are designed to promote just and equitable principles of trade, and to protect investors and the public interest. The Exchange further believes that the proposed rule change will further the objectives of Section 6(b)(3)<sup>9</sup> of the Act, because it is designed to assure a fair representation of Exchange members in the selection of the Exchange's Governors.

### 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

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

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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

<sup>5</sup> The Exchange notes that, for purposes of the Act, ETP Holders and Equity ASAP Holders are "members" of the PCX. See note 6, *infra*.

<sup>6</sup> See Securities Exchange Act Release No. 42759 (May 5, 2000), 65 FR 30654 (May 12, 2000) (order approving PCX proposal to create PCX Equities, Inc.).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(3).

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-00-09 and should be submitted by December 20, 2000.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed the Exchange's proposed rule change and finds, for the reasons set forth below, that the proposal, as amended, is consistent with the requirements of Section 6(b) of the Act<sup>10</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> Specifically, the Commission believes the proposal is consistent with Section 6(b)(3)<sup>12</sup> because it ensures that all member constituencies of the Exchange, including ETP Holders, Equity ASAP Holders, or Allied Persons of an ETP Firm of Equity ASAP Holder, will have the opportunity to be represented on the Nominating Committee. Section 6(b)(3) of the Act requires that the rules of an exchange ensure a fair representation of its members in the selection of its directors. The PCX Nominating Committee is responsible for selecting the slate of appropriate candidates to be presented to the PCX's members for election to the PCX Board of Governors and the PCX Nominating Committee. Thus, by ensuring that all member constituencies are permitted to be represented on the Nominating Committee, the Exchange's proposal should assure that its members are fairly represented when selecting directors.

In addition, the Exchange has proposed to permit public representatives to serve on the Nominating Committee. The Commission believes that allowing public representatives to serve on the Nominating Committee will help to ensure that qualified governors are nominated for positions on the PCX Board, as well as the PCX Nominating Committee. As the Commission has noted in the past, public representatives should provide unique unbiased

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

<sup>11</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(3).

perspectives to the governance of an exchange, and should enhance the ability of an exchange to address issues in a non-discriminatory fashion.<sup>13</sup> Therefore, the Commission believes that adding public representatives to the Nominating Committee should enhance the integrity of the nominating process.

The Exchange has also proposed to permit PCX public Governors to serve as the public representatives on the Nominating Committee. The Commission notes that as currently drafted, the PCX Constitution seems to permit any governor to serve on the Nominating Committee. However, in Amendment No. 1,<sup>14</sup> the Exchange clarified that only public Governors will be permitted to serve on the Nominating Committee, and committed to submit a change to the PCX Constitution to reflect this limitation to its members.<sup>15</sup> The Commission notes that any such clarification must be submitted to the Commission as a proposed rule change and expects such proposed rule change to be submitted as soon as practicable after the requisite member vote. Further, the Commission notes that any change to the PCX's interpretation that this proposal only permits public Governors to be eligible for positions on the PCX Nominating Committee would require a rule change to be submitted to the Commission. For purposes of this filing, however, the Commission believes that it is acceptable to permit public governors to serve as public members of the Nominating Committee.

To accommodate the public positions, the Exchange has eliminated the requirement that at least two floor members be represented on the Nominating Committee. Because the Commission believes that public representation on the Nominating Committee enhances the ability of the Committee to select eligible candidates for the PCX Board and PCX Nominating Committee, the Commission believes that this change is consistent with the Act. Further, the Commission notes that the composition of the Nominating Committee continues to contemplate all types of PCX members. Thus, floor members may continue to be represented on the Nominating Committee, if members are elected.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirteenth day after publication of notice thereof in the **Federal Register**. The Commission

understands that the PCX's Nominating Committee is currently considering candidates for election to the Nominating Committee in January 2001. Approval of this proposal on an accelerated basis will enable the PCX Nominating Committee to consider public Governors for the public representative positions on the January 2001 Nominating Committee, which as described above, the Commission believes will enhance the nominating process. The Commission believes that good cause exists consistent with Sections 6(b)(3)<sup>16</sup> and 19(b)<sup>17</sup> of the Act to approve the proposed rule change, as amended on an accelerated basis.

## V. Conclusion

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-PCX-00-09), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43567; File No. SR-Phlx-00-100]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending Its Pilot Program To Assess a Monthly Credit of up to \$1,000 to Qualified Members

November 15, 2000.

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 November 8, 2000, 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 Exchange. 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 Phlx, pursuant to Rule 19b-4 under the Act, proposes to extend its current pilot program that allows certain Exchange members to receive a monthly credit of up to \$1,000.<sup>3</sup> The credit will be applied against fees, dues, charges and other amounts as may from time to time be owed to the Exchange that month, except fines, late fees, out-of-pocket expenses,<sup>4</sup> pass-through costs,<sup>5</sup> capital funding fees,<sup>6</sup> payment for order flow fees,<sup>7</sup> and any fees paid by equity trading permit holders in respect of any trading permits the Exchange may issue, ("credit-eligible fees")<sup>8</sup> by members who own the membership by which they are a member ("member-owners") and certain other categories of members described below. The current pilot program became effective upon filing on May 16, 2000 and expires on November 16, 2000;<sup>9</sup> the Exchange now proposes to extend the pilot program for an additional six-month period through May 16, 2001.

In addition to member-owners, the credit may be applied against credit-

<sup>3</sup> The extension of the pilot program incorporates three changes to the initial pilot program: (1) Payment for order flow fees are not eligible for inclusion in the credit, (2) daughters-in-law and sons-in-law are now included in the definition of an immediate family member, and (3) the amount of the credit will be included on the member's invoice instead of the member submitting a credit form each month.

<sup>4</sup> Out-of-pocket expenses include charges for wireless telephone services, postage, ILX machines and Dow Jones News Service.

<sup>5</sup> Pass-through costs include charges for member health insurance and parcel delivery services.

<sup>6</sup> Capital funding fees are assessed on owners to provide funding for technological improvements and other capital needs. On June 29, 2000, the Commission approved the capital funding fee for a 36 month period. See Securities Exchange Act Release No. 42993 (June 29, 2000), 65 FR 42415 (July 10, 2000) (SR-Phlx-99-51).

<sup>7</sup> Payment for order flow fees are fees imposed on transactions by Phlx specialists and Registered Options Traders in the Top 120 Options on the Phlx. See Securities Exchange Act Release Nos. 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000) (SR-Phlx-00-77); 43480 (October 25, 2000) (SR-Phlx-00-86 and SR-Phlx-00-87); and 43481 (October 25, 2000), 65 FR 66277 (November 3, 2000) (SR-Phlx-00-88 and SR-Phlx-00-89).

<sup>8</sup> The credit-eligible fees are fees assessed on members and include transaction as well as trading floor fees. Transaction fees include equity transaction value charges, equity floor brokerage transaction fees, option comparison charges and option transaction charges. Trading floor fees include charges for trading post/booth, controller space, shelf space, transmission, execution/communication charge and floor facility fees. Fees assessed on foreign currency options participants are not considered credit-eligible fees.

<sup>9</sup> See Securities Exchange Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000). The credit is part of the Exchange's long-term financing plan, which includes the \$1,500 capital funding fee. See *supra* note 6.

<sup>13</sup> See Securities Exchange Act Release Nos. 42235 (December 14, 1999), 64 FR 71839 (December 22, 1999); and 40760 (December 8, 1998), 63 FR 70884 (December 22, 1998).

<sup>14</sup> See note 6, *supra*.

<sup>15</sup> See Amendment No. 1, *supra* note 3.

<sup>16</sup> 15 U.S.C. 78f(b)(3).

<sup>17</sup> 15 U.S.C. 78s(b).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

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