

Section 11A<sup>13</sup> of the Act.<sup>14</sup> The Commission had previously stated that a revised Plan must be filed with the Commission by July 19, 2001, or the Commission will amend the Plan directly.<sup>15</sup> The Participants submitted an Interim Plan to the Commission on August 3, 2001, which, among other things, includes a process for selecting an alternative securities information processor. Therefore, to enable the Commission to consider and to solicit comment on the Interim Plan, the Commission believes that it is appropriate to extend the current Plan.

The Commission notes that the revised final Plan must provide for either (1) a fully viable alternative exclusive securities information processor ("SIP") for all Nasdaq securities, or (2) a fully viable alternative non-exclusive SIP in the event that the Plan does not provide for an exclusive SIP. If the revised Plan provides for an exclusive consolidating SIP, a function currently performed by Nasdaq, the Commission believes that, to avoid conflicts of interest, there should be a presumption that a Plan Participant, and in particular Nasdaq, should not operate such exclusive consolidating SIP. The presumption may be overcome if: (1) The Plan processor is chosen on the basis of bona fide competitive bidding and the Participant submits the successful bid; and (2) any decision to award a contract to a Plan Participant, and any ensuing review or renewal of such contract, is made without that Plan Participant's direct or indirect voting participation. If a Plan Participant is chosen to operate such exclusive SIP, the Commission believes there should be a further presumption that the Participant-operated exclusive SIP shall operate completely separate from any order matching facility operated by that Participant and that any order matching facility operated by that Participant must interact with the plan-operated SIP on the same terms and conditions as any other market center trading Nasdaq-listed securities. Further, the Commission will expect the NASD to provide direct or indirect access to the

alternative SIP, whether exclusive or non-exclusive, by any of its members that qualify, and to disseminate transaction information and individually identified quotation information for these members through the SIP.

Furthermore, the revised final Plan should be open to all SROs, and the Plan should share governance of all matters subject to the Plan equitably among the SRO Participants. The Plan also should provide for sharing of market data revenues among SRO Participants. Finally, the Plan should provide for sharing of market data revenues among SRO Participants. Finally, the Plan should provide a role for participation in decision making to non-SROs that have direct or indirect access to the alternative SIP provided by the NASD. The Commission expects the parties to continue to negotiate in good faith on the above matters<sup>16</sup> as well as any other issues that arise during Plan negotiations.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1-2<sup>17</sup> under the Act until the earlier of September 19, 2001, or until such time as the calculation methodology of the BBO is based on a mutual agreement among the Participants approved by the Commission. The Commission further finds that it is appropriate to extend the exemptive relief from Rule 11Aa3-1<sup>18</sup> under the Act to BSE through September 19, 2001. The Commission believes that the temporary extensions of the exemptive relief provided to vendors and the BSE, respectively, are consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f)<sup>19</sup> and 11A<sup>20</sup> of the Act and in Rules 11Aa3-1<sup>21</sup> and 11Aa3-2<sup>22</sup> thereunder.

## VII. Conclusion

*It is therefore ordered*, pursuant to Sections 12(f)<sup>23</sup> and 11A<sup>24</sup> of the Act and paragraph (c)(2) of Rule 11Aa3-2<sup>25</sup> thereunder, that Participants' request to extend the effectiveness of the Plan, as amended, for Nasdaq/NM securities traded on as exchange on an unlisted or listed basis through September 19, 2001,

and certain exemptive relief through September 19, 2001, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44688; File No. SR-PCX-2001-31]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a One-Year Extension of the AOR Pilot Program

August 13, 2001.

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 August 8, 2001, 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 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 Exchange is proposing to extend its Automated Opening Rotations ("AOR") pilot program for one year. The text of the proposed rule change follows. Deleted text is bracketed. New text is italicized.

#### ¶5073 Trading Rotations

Rule 6.64(a)-(g)—No change.

#### Commentary

.01—No Change

.02 Pilot Program. The Automated Opening Rotation System is subject to a [one year] pilot program, which is set to expire on [September 28, 2001] *September 30, 2002.*

<sup>26</sup> 17 CFR 200.30-3(a)(29).

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

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

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> In approving this extension, the Commission has considered the extension's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

<sup>15</sup> See *supra* note 4. The Commission notes that the SuperMontage order stated the Participants were directed to produce a revised plan by July 19, 2001. The Commission, however, provided for a 3-month extension of the July 19, 2001 deadline if requested by the Participants for good cause. The Commission recognizes that the Participants have been meeting to discuss the alternatives for a new plan.

<sup>16</sup> See also discussion in the SuperMontage order, *supra* note 4.

<sup>17</sup> 17 CFR 240.11Ac1-2.

<sup>18</sup> 17 CFR 240.11Aa3-1.

<sup>19</sup> 15 U.S.C. 78l(f).

<sup>20</sup> 15 U.S.C. 78k-1.

<sup>21</sup> 17 CFR 240.11Aa3-1.

<sup>22</sup> 17 CFR 240.11Aa3-2.

<sup>23</sup> 15 U.S.C. 78l(f).

<sup>24</sup> 15 U.S.C. 78k-1.

<sup>25</sup> 17 CFR 240.11Aa3-2(c)(2).

## 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. 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

On September 30, 1999, the Commission approved a one-year pilot program for the operation of the Exchange's AOR System.<sup>3</sup> On August 21, 2000, the Commission granted a one-year extension to the pilot program.<sup>4</sup> The extension program is currently set to expire on September 28, 2001.<sup>5</sup> AOR provides a procedure to facilitate the execution of options orders at the opening by providing an electronic means of establishing a single price opening. In its order approving the pilot program, the Commission stated that it expects the Exchange to study the issues related to the Commission's concerns during the pilot period and to report back to the Commission at least sixty days prior to seeking permanent approval of AOR.

The Exchange is requesting an additional extension of the pilot program until the Commission grants permanent approval or one year, whichever occurs first. The added time permits the Exchange an opportunity to continue reviewing and evaluating the program in order to properly address the Commission's concerns before seeking permanent approval. The Exchange believes that this program is operating successfully and without any problems, and on that basis, the Exchange believes that a one-year extension of the program is warranted. At this time, the Exchange is not seeking to modify the pilot program.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

<sup>3</sup> See Securities Exchange Act Release No. 41970 (September 30, 1999), 64 FR 54713 (October 7, 1999).

<sup>4</sup> See Securities Exchange Act Release No. 43187 (August 21, 2000), 64 FR 52464 (August 29, 2000).

<sup>5</sup> *Id.*

Section 6(b)<sup>6</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>7</sup> in particular, in that it is designed to 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 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change. 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, 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,

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

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-2001-31 and should be submitted by September 10, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44682; File No. SR-Phlx-2001-54]

### Self Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Elimination of the Requirement That the Three Core Members of the Equity and Options Allocation, Evaluation, and Securities Committees Who Conduct a Securities Business be the Same People for Both Committees

August 10, 2001.

On May 16, 2001, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to eliminate the requirement that the three core members of the Equity and Options Allocation, Evaluation, and Securities Committees who conduct a securities business be the same people for both committees.

The proposed rule change was published for comment in the **Federal Register** on July 11, 2001.<sup>3</sup> The Commission received no comments on the proposal.

<sup>10</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.

<sup>3</sup> See Securities Exchange Act Release No. 44505 (July 11, 2001), 66 FR 36355.