

conducted on a COD ("Collection on Delivery") or POD ("Payment on Delivery") basis and specifies requirements for the confirmation, affirmation and book entry settlement of all depository eligible transactions.

NYSE Rule 387, in its present form, refers to "member" and "member organization" only once in the same paragraph (NYSE Rule 387(a)(1)) and thereafter omits reference to "member" throughout the other paragraphs of the Rule. The proposed amendment to NYSE Rule 387 would clarify the Rule's application to all "member[s]" and "Member organization[s]." Specifically, the amendments insert "member" in paragraphs: detailing overall applicability of the Rule (NYSE Rule 387(a)); requiring confirmation (NYSE Rule 387(a)(3)); and affirmation (NYSE Rule 387(a)(4)) of COD/POD transactions.

#### (2) Statutory Basis

The Exchange believes the basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act<sup>3</sup> that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling and facilitating transactions in securities.

#### *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 the 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**

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 Exchange 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 20549-0609. 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-2001-31 and should be submitted by October 16, 2001.

For the Commission, by the Division of the Market Regulation, pursuant to delegated authority.<sup>4</sup>

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

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#### **SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34-44812; File No. SR-PCX-2001-28)

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Composition of the Nominating Committee**

September 18, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 1, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, and amended such proposed rule change on September 6,

2001,<sup>3</sup> 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, as amended, from interested persons.

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

The Exchange proposes to clarify its interpretation of the PCX Constitution to eliminate the restriction that only public Governors may serve on the Nominating Committee.

#### **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 the sections A, B, and C below, of the most significant parts of such statements.

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

##### 1. Purpose

On November 16, 2000, the Commission approved the Exchange's Constitutional change that required at least one public representative serve on the Nominating Committee ("Committee") and permitted the service of Governors on the Committee.<sup>4</sup> That filing stated that the Exchange interpreted the rule proposal to mean that the only Governors permitted on the Committee were public Governors. Upon further consideration and review, the PCX has determined that this interpretation is too narrow.

The composition of the Committee is governed by Article III, Sections 4(a) and 4(b) of the PCX Constitution. Section 4(a) provides: "At each annual meeting there shall be elected by the membership, by ballot, for a term of one

<sup>3</sup> In Amendment No. 1, the PCX clarified its interpretation of Article III, Sections 4(a) and 4(b) of the PCX Constitution to eliminate the restriction that only public Governors may serve on the Nominating Committee. See letter from Cindy L. Sink, Senior Attorney, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulations, SEC, dated September 5, 2001 ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 43576 (November 16, 2000), 65 FR 71185 (November 29, 2000) (Order approving File No. SR-PCX-00-09).

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

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

year, a Nominating Committee of nine persons, one of whom shall be nominated as Chair and one of whom shall be nominated as Vice Chair who are eligible for election in accordance with Section 4(b) of this Article III, none of whom shall be an officer of the Exchange. The Nominating Committee shall assume duties as provided in Section 4(d) of this Article III." Section 4(b) provides: "The nine members of the Nominating Committee eligible to be elected at each annual meeting shall be as follows: At least one Committee member shall be a representative of the public. At least seven Committee members shall be members or office members or office allied members, Equity Trading Permit Holders, Equity ASAP Holders or Allied Persons of an ETP firm or an Equity ASAP Holder." Therefore, eligible PCX governors are not restricted from serving on the Committee. The Constitution also permits a public Governor to serve as a representative of the public.

Permitting Governors to serve on the Committee is consistent with the PCX Constitutional language, and the basic composition is not affected. There must always be at least one public representative on the Committee, and there may be up to two. The Exchange maintains the flexibility it needs to meet its obligation to have a fair representation of Exchange members. Therefore, the Exchange submits this clarification to its interpretation of Article III, Section 4(b) of the PCX Constitution to eliminate the restriction that only public Governors may serve on the Committee.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change, as amended, furthers the objectives of Section 6(b)(3) of the Act,<sup>7</sup> in that 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 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>8</sup> and subparagraph (f)(1) of Rule 19b-4 thereunder<sup>9</sup> because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such proposed rule change, as amended, 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 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 Section. 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-2001-28 and should be submitted by October 16, 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. 34-44809; File No. SR-Phlx-2001-38]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the Philadelphia Stock Exchange, Inc., Relating to the Definition of a Controlled Account**

September 18, 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 March 12, 2001, 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. On August 16, 2001, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> The Commission is publishing this notice, as amended, 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 proposes to amend the definition of controlled accounts under Phlx Rule 1014(g)(i) and Option Floor Procedure Advice ("Advice") B-6 to

<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 Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Senior Special Counsel, Division of Market Regulation, Commission, dated August 15, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified why the proposal is properly filed in response to the Order Instituting Public Administrative Proceeding Pursuant to Section 19(h)(1) of the Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File 3-10282 (the "Order"). The Exchange explained that in accordance with Section IV.B.j of the Order, the proposal would codify a market maker practice pertaining to the allocation of orders. Specifically, the proposal is intended to codify the practice whereby the term "controlled account," as used in Phlx Rule 1014, has been interpreted to yield the priority of non-member broker-dealer orders to customer orders, and treat non-member broker-dealer orders on par with specialists, Registered Options Traders and other "firm proprietary" accounts.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(3).

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

<sup>9</sup> 17 CFR 240.19-4(f)(1).