

participants expressed an interest in using such a service. In light of the development costs involved and the limited interest expressed by its participants, DTC's Board of Directors concluded that DTC's resources would be better applied to projects that serve a wider participant base.

DTC will notify the MBS Division's participants and the Commission upon the completion of the closure of the MBS Division.⁷

DTC believes that the proposed rule change is consistent with the requirements of section 17(A)(b)(3)(A) of the Act and the rules and regulations thereunder applicable to DTC because it promotes and accurate clearance and settlement of securities transactions.

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

DTC perceives no impact on competition by reason of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC solicited written comments from its participants on GNMA's proposal to move its securities to Fedwire in DTC Important Notice No. 0057 dated June 1, 2000.⁸ Participants responded by telephone and through discussions at meetings of the BMA, the GNMA Settlement Task Force formed under the auspices of the BMA, and DTC's Operations and Planning Committee. The consensus at these meetings and discussions was that DTC should support the proposed conversion to Fedwire and that GNMA securities should remain eligible for processing at DTC to the same extent as are other Fedwire eligible securities currently processed at DTC. DTC is a member of the GNMA Conversion Subcommittee and has worked closely with the BMA, GNMA, the Federal Reserve Banks, and interested industry members to facilitate the transition to Fedwire. DTC has issued Important Notices to DTC and MBS Division participants detailing the conversion processing flows and testing procedures.⁹

⁷ Notwithstanding the closure of the MBS Division, DTC will maintain the documents and records of the MBS Division in accordance with the regulations promulgated under Section 17(a) of the Exchange Act, 15 U.S.C. 78q.

⁸ A copy of this notice is attached as Exhibit 2 of DTC's filing, which is available through the Commission's Public Reference Section or through DTC.

⁹ Attached as Exhibit 2 of DTC's filing are the following DTC Important Notices relating to the GNMA conversion: Nos. 0057 (June 1, 2000); 1483 (Feb. 15, 2001) (Conversion Plan attached); 1937

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

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so filing 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 20549-0609. 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, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR-DTC-2001-14 and should be submitted by January 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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(May 24, 2001); 2158 (June 21, 2001); 2159 (June 19, 2001); and 2198 (July 5, 2001). These documents are available through the Commission's Public Reference Section or through DTC.

¹⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45144; File No. SR-PCX-2001-45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Inactive Lessors' Eligibility to Serve on the Board of Governors

December 10, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 7, 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 PCX proposes to amend Article III, Section 2(b) of the PCX Constitution and PCX rule 1.1(h) to provide for the eligibility of inactive lessors to serve on the PCX Board of Governors ("Board"). Below is the text of the proposed rule change. Text in italics indicates material to be added.

* * * * *

Article III

Eligibility of Governors

SEC. 2(b). Any member, allied member or person who is an officer or director of the parent or subsidiary corporation of a member firm, or a general partner in a partnership which owns or is wholly owned by a member firm, or an officer or director of a member firm or of a participant firm of any subsidiary of the Exchange performing depository or clearing functions, or an officer, director or general partner of the parent or a subsidiary corporation of such clearing member firm or depository participant firm, *or an inactive lessor* or any person not affiliated with a broker or dealer in securities is eligible to be elected as a member of the board of Governors. Of the governors, in each of the classes specified in Sec. 2(a), above, at least one shall be a member of the Exchange, at least one shall be an office member or office allied member of the Exchange,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

and at least three shall be representatives of the public and shall not be, or be affiliated with, a broker or dealer in securities. There shall be at least two floor members on the board at all times, one of which shall be an Equity Trading Permit Holder, and Equity-ASAP Holder or an Allied Person of an ETP or an Equity ASAP Holder.

* * * * *

Inactive Lessor

Rule 1.1(h). Inactive Lessor: The term "inactive lessor" shall refer to a natural person, firm or other such entity as the Board may approve, who owns or inherits a membership for the sole purpose of acting as a lessor. *For purposes of the composition of the Board of Governors, inactive lessors are not deemed to be representatives of the public.*

* * * * *

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

In the filing with the Commission, the PCX 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 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

The Exchange is proposing to amend the PCX Constitution and Rules to clearly establish that PCX inactive lessors are eligible to serve on the Exchange's Board. An inactive lessor is defined in the PCX Constitution as "a natural person, firm or other such entity as the Board may approve, who owns or inherits a membership for the sole purpose of acting as a lessor."³ Previously, some of the PCX's inactive lessors had requested to have their interests represented on the Board. A number of these inactive lessors have presented their names to the PCX's Nominating Committee so that they may be nominated and stand for election to the Board. The Exchange believes that

permitting these individuals to serve on the Board is appropriate.

The PCX requirements relating to the eligibility of persons to serve on the Board is set forth in Article III, Section 2(b) of the PCX Constitution, which provides, in part, as follows:

"Any member,⁴ allied member⁵ or person who is an officer or director of the parent or subsidiary corporation of a member firm,⁶ or a general partner in a partnership which owns or is wholly owned by a member firm, or an officer or director of a member firm or of a participant firm of any subsidiary of the Exchange performing depository or clearing functions, or an officer, director or general partner of the parent or a subsidiary corporation of such clearing member firm or depository participant firm, or any person not affiliated with a broker or dealer in securities is eligible to be elected as a member of the Board of Governors." (Footnotes added)

Article III, Section 2(a) of the PCX Constitution provides that the Exchange's elected Governors are divided into three classes, each of which is composed of seven Governors. At each Annual Meeting of the PCX, a new class (consisting of seven Governors) is elected. Pursuant to Article III, Section 2(b), of the seven Governors elected at each Annual Meeting, at least one must be a member of the Exchange; at least one must be an office member or office allied member of the Exchange; and at least three must be representatives of the public. This leaves two slots per class (and a total of six slots on the Board at any given time) that may be filled by other qualified persons. Under the proposal, an inactive

⁴ The term "member" is defined as "a natural person in whose name the membership is held and who is in good standing." See PCX Constitution, Article V, Section 3. The term "floor member" is defined as "a member of the Exchange, who meets the qualification requirements for the purpose of exercising full trading privileges on a floor of the Exchange on behalf of a member organization." See PCX Constitution, Article V, Section 8.

⁵ The term "allied member" refers to a non-member who is one of the following: "(1) An employee of a member firm who controls such member firm, or (2) an employee of a member firm corporation who is a director or a principal executive officer of such corporation, or (3) an employee of a member firm limited liability company who is a manager or a principal executive officer of such limited liability company, or (4) a general partner in member firm partnership; and who has been approved by the Exchange as an allied member." See PCX Constitution, Article V, Section 6.

⁶ "Member firm" is defined as "a partnership, corporation, limited liability company or other organization in good standing who owns or leases a membership or upon whom a member has conferred privileges of membership pursuant to and in compliance with Article VIII of this Constitution." See PCX Constitution, Article V, Section 4 and PCX Rule 1.1(j).

lessor would be qualified to fill one of these open slots. However, the Exchange notes that Article III, Section 2(b) requires that these open slots must otherwise be filled when necessary to meet other requirements set forth in Section 2(b), namely that there must be at least two floor members on the Board at all times (one of which must be an Equity Trading Permit Holder, an Equity-ASAP Holder or an Allied Person of an ETP Firm or an Equity ASAP Holder) and that, beginning in the year 2001, there must be eleven representatives of the public on the Board at all times.

The proposed rule change is not intended to permit any change to the number of public representatives eligible to serve on the PCX's Board. The Exchange represents that it will not place an inactive lessor on the Board in order to fill a slot designated for a "representative of the public." According, the Exchange proposes to amend PCX Rule 1.1(h), which defines the term "inactive lessor," to clarify that for purposes of the composition of the PCX's Board, inactive lessors are not deemed to be representatives of the public.⁷

Inactive lessors have an interest in the activities of the Exchange because they have a financial interest in the Exchange by virtue of owning a membership. The value of their investments is directly tied to decisions made by the Board. The PCX Constitution, Article III, Section 2(c), states that care should "be taken to have the various interest of the membership represented on the Board of Governors."

Finally, the Exchange notes that the Constitution of the Chicago Board Options Exchange ("CBOE") has a similar provision that permits service by a "lessor director" on its Board of Directors. Specifically, the CBOE provision permits service by a member "who directly or indirectly owns and controls a membership with respect to which he acts solely as lessor and who is not actively engaged in business as a 'person associated with a broker-dealer' as those terms are defined in the Securities Exchange Act of 1034.

* * * * *

⁷ The PCX states that the proposed language in PCX Rule 1.1(h) to clarify the role of inactive lessors on the Board is intended as an interpretation of Article III, Section 2(b) of the PCX Constitution. Telephone conversation between Michael D. Pierson, Vice President, Regulatory Policy, PCX, and Kelly M. Riley, Senior Special Counsel and Cyndi N. Nguyen, Attorney, SEC on December 5, 2001.

⁸ See CBOE Constitution, Article VI, Section 6.1.

³ See PCX Rule 1.1(h).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular, in that it is designed to promote just and equitable principals of trade 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 the 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

No written comments were solicited or received with respect to 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 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-2001-45 and should be submitted by January 2, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-30957 Filed 12-14-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45145; File No. SR-SCCP-2001-01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Adopting a Fee Schedule for Electronic Communications Networks

December 10, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 23, 2001, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") and on June 25, 2001, and November 27, 2001, amended the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by SCCP. 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

SCCP has adopted a new fee schedule for SCCP participants for trades executed on the Philadelphia Stock Exchange, Inc. ("Phlx") for Electronic Communications Networks ("ECNs").²

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter ("OTC") market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market maker or exchange market maker

The new fee schedule will operate as a pilot program for one year, wherein SCCP proposes to waive certain dues, fees and charges, including trade recording fees, value fees, treasury transactions charges but not account fees, research fees, computer transmission/tapes charges, or miscellaneous charges on SCCP's fee schedule.³

After the initial pilot period, an ECN will be eligible for the new fee schedule only if it has achieved average daily equity volume on the Phlx of at least 5,000 trades and 5,000,000 shares in the twelfth month after the ECN first became subject to the ECN fee schedule.⁴ If the targeted amount is not met, the ECN will be subject to the SCCP fee schedule in effect at that time. After this pilot program ends in 2002, SCCP will make another rule filing with the Commission to establish new fees based on volume thresholds for ECNs.

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

In its filing with the Commission, SCCP 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. SCCP has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.⁵

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

The proposed changes to SCCP's fee schedule are intended to attract equity order flow from ECNs to Phlx by substituting a more competitive fee schedule tied to high volume targets. The high volume targets would be triggered in the twelfth month of the fee. Should an ECN not meet the targeted volume numbers described above, it

that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

³ Certain provisions of the SCCP Fee Schedule will not apply to ECNs because they apply to specialists and/or relate to margin financing, such as specialist discount, margin account interest, P&L statements charges, and buy-ins.

⁴ Because this volume requirement only applies to volume in the twelfth month (meaning to the thirteenth month's fee), actually waiving SCCP fees that month would necessarily require an extension of the pilot program beyond the initial 12 months. In the extension, SCCP would address whether the targets would continue to be monthly.

⁵ The Commission has modified the text of the summaries prepared by SCCP.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).