

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

Written comments were neither solicited nor received.

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

Nasdaq asserts that the proposed rule change is effective upon filing pursuant to section 19(b)(3)(A) of the Act⁷ and paragraph (f)(6) of Rule 19b-4 thereunder,⁸ because the proposed rule change: (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 for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.⁹

Nasdaq has requested that the Commission waive the 30-day period, which would make the rule operative immediately. The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case.¹⁰ The Commission believes that no purpose would be served by having 30 days pass before the rule becomes operative because, during the intervening period, issuers and investors could become confused as to which grace periods applied. Allowing the rule to become operative immediately will allow Nasdaq to explain its bid price requirements more clearly to issuers that might have need of the grace period.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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, 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 NASD. All submissions should refer to File No. SR-NASD-2002-13 and should be submitted by March 4, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45382; File No. SR-PCX-2002-02]

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 Manner in Which Computer Generated Orders Are Designated

February 1, 2002

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 January 7, 2002, 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. On January 25, 2002, the PCX submitted Amendment No. 1 to the proposed rule change.³ 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 PCX proposes to change the manner in which member firms are required to designate an order as "computer generated." The text of the proposed rule change, as amended, is available at the PCX and the Commission.

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, as amended, 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 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 purpose of the proposed rule change, as amended, is to change the manner in which member firms are required to designate an order as "computer generated" to accurately reflect current technological advances.

On September 22, 2000, the Commission approved a PCX proposed

³ See letter from Cindy L. Sink, Senior Attorney, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 24, 2002 ("Amendment No. 1"). In Amendment No. 1, the PCX changed the basis for immediate effectiveness for the proposed rule change. Specifically, the PCX re-designed the proposed rule change as a filing made under Rule 19b-4(f)(5) under the Act relating to a change in an existing order-entry or trading system of a self-regulatory organization, as opposed to a filing under Rule 19b-4(f)(1) relating to a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on January 25, 2002, the date the PCX filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6)

⁹ In addition, Rule 19b-4(f)(6) requires the self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of such proposed rule change, or such shorter time as designated by the Commission. Nasdaq filed with the Commission an earlier iteration of the proposed rule change (SR-NASD-2001-94) which was later withdrawn. The Commission deems the submission of SR-NASD-2001-94 to fulfill the five-day pre-filing notice requirement for the present filing, SR-NASD-2002-13.

¹⁰ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

rule change relating to option orders that are created and communicated to the Exchange electronically, without manual input ("computer generated orders").⁴ Under that proposed rule change, computer generated orders are not eligible for automatic execution via the Exchange's Auto-Ex System. To prevent computer generated orders from being processed through Auto-Ex, Member Firms sending computer generated orders electronically to the Exchange are required to designate them with a "CG" in the "additional instruction" field of the Common Message Switch ("CMS")⁵ record layout. Orders so designated are re-routed for representation by a Floor Broker. The Exchange represents that due to changes in technology specifications, the indicator "CG" orders must now be designated on line 3C, field 1, of the CMS record layout. The Exchange represents that Orders so designated will be re-routed for representation by a Floor Broker.

The proposed rule change, as amended, requires member firms to identify CG orders "in a form and manner as prescribed by the Exchange." The PCX represents that this will provide it with flexibility to change the requirements for identifying CG orders with technological advances.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,⁶ in general, and furthers the objectives of section 6(b)(5) of the Act,⁷ 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, as amended, 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, as amended, were neither solicited nor received.

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

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act⁸ and subparagraph (f)(5) of Securities Exchange Act Rule 19b-4⁹ thereunder because it effects a change in an existing order-entry or trading system of a self-regulatory organization that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. At any time within 60 days after January 25, 2002, 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.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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, as amended, 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-2002-02 and should be submitted by March 4, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45388; File No. SR-Phlx-2001-121]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending its Fee Schedule for the Use of the Intermarket Trading System

February 4, 2002.

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 31, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Phlx. 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 proposes to revise its fee schedule by establishing a fee charged to equity specialists. According to the Exchange, the proposed fees are based on the use of the Intermarket Trading System ("ITS") to execute certain sized customer orders received over the Philadelphia Stock Exchange Automated Communication and Execution ("PACE")³ system, and sent outbound over ITS with the customer's clearing information. The Exchange also proposes to create a credit to equity specialists for net inbound shares executed over ITS.

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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ PACE is the electronic order routing, delivery, execution and reporting system used to access the Phlx Equity Floor.

⁴ See Securities Exchange Act Release No. 43328 (September 22, 2000), 65 FR 58834 (October 2, 2000) (SR-PCX-00-13).

⁵ The CMS is the options order format generally followed by all options exchanges.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(5).

¹⁰ See 15 U.S.C. 78(b)(3)(C).

¹¹ 17 CFR 200.30-3(a)(12).