

public interest, the protection of investors, the safeguarding of securities and funds, to use its authority under the Act to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options.²¹ Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency for which it is responsible.²² The Commission finds that the approval of GSCC's proposed rule change is consistent with these Sections.

First, the Commission's approval of GSCC's proposed rule change to establish a cross-margining arrangement with BCC and to extend its hub and spoke approach to cross-margining to include BCC along with BOTCC, CME, and NYCC is in line with the Congressional directive to the Commission to facilitate linked and coordinated facilities for the clearance and settlement of securities and futures.²³ Second, approval of GSCC's proposal should result in increased and better information sharing between GSCC and Participating COs regarding the portfolios and financial conditions of participating joint and affiliated members. As a result, GSCC and participating COs will be in a better position to monitor and assess the potential risks of participating joint or affiliated members and will be in a better position to handle the potential losses presented by the insolvency of any joint or affiliated member. Therefore, GSCC's proposal should help GSCC better safeguard the securities and funds in its possession or control or for which it is responsible.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-GSCC-2002-01) be and hereby is approved.

²¹ 15 U.S.C. 78q-1(a)(2)(A)(ii).

²² 15 U.S.C. 78q-1(b)(3)(F).

²³ 15 U.S.C. 78q-1(a)(2)(A)(ii).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-7903 Filed 4-1-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45634; File No. SR-PCX-2002-13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Priority of Bids and Offers on the Options Floor and the Manner in Which Orders Must Be Allocated in Connection With Options Transactions

March 22, 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 February 19, 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 March 21, 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 adopt new rules and to amend existing rules on the priority of bids and offers on the Options Floor and the manner in which orders must be allocated in connection with options transactions on the Exchange.

Below is the text of the proposed rule change. Deleted language is in brackets. Proposed new language is italicized.

* * * * *

Obligations of Market Makers

Rule 6.37(a)-(c)—No change.

(d)—No Change.

(e) Prohibited Practices and Procedures.

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Michael D. Pierson, Vice President, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 21, 2002. The changes made by Amendment No. 1 have been incorporated into this notice.

(1)—No Change.

(2) *Any practice or procedure whereby Market Makers trading any particular option issue determine by agreement the allocation of orders that may be executed in that issue is prohibited.*

Priority of Bids and Offers

Rule 6.75

No change.

(a)-(b)—No change.

Simultaneous Bids and Offers

(c) *Except as otherwise provided, if the bids (or offers) of two or more members are made simultaneously, or if it is impossible to determine clearly the order of time in which they were made, such bids (or offers) will be deemed to be on parity and priority will be afforded to them, insofar as practicable, on an equal basis.*

(d)-(e) [(c)-(d)]

Order Allocation Procedures

(f) *Determination of Time Priority Sequence.*

(1) *Floor Brokers. A Floor Broker is responsible for determining the sequence in which bids or offers are vocalized on the Trading Floor in response to the Floor Broker's bid, offer or call for a market. Any disputes regarding a Floor Broker's determination of time priority sequence will be resolved by the Order Book Official, provided that such determinations of the Order Book Official are subject to further review by two Floor Officials, pursuant to Rule 6.77.*

(2) *When a Floor Broker's bid or offer has been accepted by more than one member, that Floor Broker must designate the members who were first, second, third and so forth. Except as provided below, the member with first priority is entitled to buy or sell as many contracts as the Floor Broker may have available to trade. If there are any contracts remaining, the member with second priority will be entitled to buy or sell as many contracts as there are remaining in the Floor Broker's order, and so on, until the Floor Broker's order has been filled entirely.*

(3) *Market Makers and Order Book Officials. A Market Maker is responsible for determining the sequence in which bids and offers are vocalized on the Trading Floor in response to that Market Maker's bid, offer or call for a market. Likewise, an Order Book Official is responsible for determining the sequence in which bids and offers are vocalized on the Trading Floor in response to the Order Book Official's bid, offer or call for a market. The order allocation procedures for Market Makers*

and Order Book Officials, including the determination of time priority sequence, are the same as those for Floor Brokers as set forth in this Rule 6.75(f).

(4) LMM Guaranteed Participation.

(A) If the LMM establishes first priority during the vocalization process, the LMM will be entitled to buy or sell as many contracts as the Floor Broker may have available to trade. However, if the LMM does not establish first priority during the vocalization process, but does establish second, third or some other time priority sequence, the LMM will be entitled to buy or sell the number of contracts equal to the LMM's guaranteed participation level (pursuant to Rule 6.82(d)(2)) plus any contracts the Floor Broker has remaining after the bids or offers of other members with higher time priority have been satisfied.

(B) If one or more orders in the limit order book have priority over an LMM's bid or offer, then the LMM's guaranteed participation level will apply only to the number of contracts remaining after all contracts in the limit order book that are at, or better than, the LMM's bid or offer have first been satisfied.

(C) LMMs may waive some or all of their guaranteed participation on particular trades, but only to the extent that doing so is permissible under Rule 6.86 ("Firm Quotes"). In such circumstances, if the LMM has waived the right to trade a certain number of option contracts, those option contracts will then become available for execution by the member (or members) who are next in priority sequence. For example, assume that there are 100 contracts available to sell, the LMM has guaranteed participation on 25 contracts, and the time priority sequence is as follows: the LMM is first, Market Maker #1 is second and Market Maker #2 is third. If the LMM buys 20 contracts, the remaining 80 contracts will then be available for execution by Market Maker #1. If Market Maker #1 buys 40 of those contracts, then the remaining 40 contracts will be available for execution by Market Maker #2.

(D) LMMs may direct some or all of their guaranteed participation to competing public orders in the trading crowd pursuant to Rule 6.82(d).

(E) Bid and offering prices that are disseminated by an automatic quotation system are presumed to be the bid and offering prices of the LMM for purposes of Rule 6.86 ("Firm Quotes") and Rule 6.82(d)(2) ("Guaranteed Participation"). Nevertheless, LMMs must vocalize all of their bids and offers in response to a call for a market and in acceptance of another member's bid or offer. If a Floor Broker enters the trading crowd and vocalizes acceptance of a bid or offer

that is then being disseminated, the LMM will be entitled to guaranteed participation on that transaction.

(5) Parity Due to Simultaneous Bidding or Offering.

(A) If the bids or offers of more than one member are made simultaneously, such bids or offers will be deemed to be on parity and priority will be afforded to them, insofar as practicable, on an equal basis, pursuant to Rule 6.75(c). Accordingly, efforts will be made to assure that each member on parity receives an equal number of contracts, to the extent mathematically possible. One or more members on parity may waive their rights to some of their share (or shares) of contracts, but only to the extent that doing so is permissible under Rule 6.86 ("Firm Quotes"). In such circumstances the remaining number of contracts will be allocated, to the extent practicable, on an equal basis. However, an LMM who has received guaranteed participation on a transaction may not participate in the waived portion of the order unless there are contracts remaining to be allocated after all other members have been satisfied.

(B) If the bids and offers of more than one member, including the LMM, are on parity, then the LMM's guaranteed participation will first be applied to the entire order and the remainder of the order will be allocated, to the extent practicable, on an equal basis among the members other than the LMM who are on parity. The LMM may participate in such remainder of the order only if there are contracts remaining after all members other than the LMM have first been satisfied.

(C) If the LMM waives priority or guaranteed participation when the LMM and one or more other members are on parity, then the portion of the order that the LMM has waived will be made available to the other members who are on parity. For example, assume that there are 100 contracts available to trade, the LMM has guaranteed participation on 25 contracts, and two other members are on parity with the LMM. If the LMM waives guaranteed participation (but claims priority), the order will be divided into three shares (consisting of 34 contracts, 33 contracts and 33 contracts). If the LMM waives all rights to participate in the trade, the order will be divided among the two other members who are on parity, in equal shares, each comprising 50 contracts.

(6) Size Pro Rata Allocations

(A) If the members of the trading crowd provide a collective response to a member's request for a market in order to fill a large order, pursuant to Rule 6.37(f)(2), then:

(i) if the size of the trading crowd's market, in the aggregate, is less than or equal to the size of the order to be filled, the members of the trading crowd will each receive a share of the order that is equal to the size of their respective bids or offers; and

(ii) if the size of the trading crowd's market exceeds the size of the order to be filled, that order will be allocated on a size pro rata basis, with the members of the trading crowd each receiving, to the extent practicable, the percentage of the order that is the ratio of the size of their respective bids or offers to the total size of all bids or offers. Specifically, in such circumstances, the size of the order to be allocated is multiplied by the size of an individual market participant's quote divided by the aggregate size of all market participants' quotes. For example, assume there are 200 contracts to be allocated, Market Maker #1 is bidding for 100, Market Maker #2 is bidding for 200 and Market Maker #3 is bidding for 500. Under the "size pro rata" allocation formula, Market Maker #1 will be allocated 25 contracts ($200 \times 100 \div 800$); Market Maker #2 will be allocated 50 contracts ($200 \times 200 \div 800$); and Market Maker #3 will be allocated 125 contracts ($200 \times 500 \div 800$).

Com. .01-.04—No change.

Rule 6.76(a)-(b)—No change.

(c) Two or more members entitled to priority. If the bids or offers of two or more members are both entitled to priority in accordance with paragraph (a) or paragraph (b), it shall be afforded to them, insofar as practicable, on an equal basis.

Com. .01—No change.

* * * * *

Lead Market Makers

Rule 6.82(a)-(c)—No change.

(d) Rights of Lead Market Makers

(1)—No change.

(2) Guaranteed Participation. Except as provided in subsections (A) and (B), below, LMMs shall be allocated 50% participation (or such lesser percentage as the Options Allocation Committee may establish as a condition in allocating an issue to an LMM) in transactions occurring at their disseminated bids and/or offers in their allocated issue(s). LMM participation may be greater than 50% as a result of successful competition by means of "public outcry." LMMs at their own discretion may direct some or all of their participation to competing public orders in the crowd. Public orders placed in the book shall take priority pursuant to Exchange rules. Oversight and enforcement shall be the responsibility of the OBO.

(A)-(C)—No change.

(e)–(h)(1)—No change.

(2) LMM Performance of Market Maker Function

(a) LMMs must perform all obligations provided in Rules 6.35 through 6.40 and 6.82(c). In addition, in executing transactions for their own accounts as Market Makers, LMMs [shall] have a right to participate [pro rata] with the trading crowd in trades that take place at the LMM's principal bid or offer, pursuant to the priority rules set forth in Rule 6.75.

(3)—No change.

Commentary:

.01–.03—No change.

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 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

a. Introduction

The Exchange is proposing to adopt new rules, and to amend existing rules, to include practices and procedures whereby option orders are allocated on the Options Trading Floor. This rule filing is being submitted to the Commission pursuant to subparagraph IV.B.j. of the Commission's Order of September 11, 2000.⁴

b. Obligations of Market Makers

The Exchange is proposing to adopt new PCX Rule 6.37(e)(2), which would provide that any practice or procedure whereby Market Makers trading any particular option issue determine by agreement the allocation of orders that may be executed in that issue is prohibited.

c. Simultaneous Bids and Offers

The Exchange is proposing to adopt new PCX Rule 6.75(c), entitled

“Simultaneous Bids and Offers,” which states that, except as otherwise provided, if the bids (or offers) of two or more members are made simultaneously, or if it is impossible to determine clearly the order of time in which they were made, such bids (or offers) will be deemed to be on parity and priority will be afforded to them, insofar as practicable, on an equal basis.

d. Order Allocation Procedures

1. In General

Proposed PCX Rule 6.75(f)(1) states that a Floor Broker is responsible for determining the sequence in which bids or offers are vocalized on the Trading Floor in response to the Floor Broker's bid, offer or call for a market. It further states that any disputes regarding a Floor Broker's determination of time priority sequence will be resolved by the Order Book Official, provided that such determinations of the Order Book Official are subject to further review by two Floor Officials, pursuant to PCX Rule 6.77.

Proposed PCX Rule 6.75(f)(2) provides that when a Floor Broker's bid or offer has been accepted by more than one member, that Floor Broker must designate the members who were first, second, third, and so forth. It further states that, except as otherwise provided, the member with first priority is entitled to buy or sell as many contracts as the Floor Broker may have available to trade. If there are any contracts remaining, the member with second priority will be entitled to buy or sell as many contracts as there are remaining in the Floor Broker's order, and so on, until the Floor Broker's order has been filled entirely.

Proposed PCX Rule 6.75(f)(3) (“Market Makers and Order Book Officials”) provides that a Market Maker is responsible for determining the sequence in which bids and offers are vocalized on the Trading Floor in response to that Market Maker's bid, offer or call for a market. Likewise, an Order Book Official is responsible for determining the sequence in which bids and offers are vocalized on the Trading Floor in response to the Order Book Official's bid, offer or call for a market. The proposed rule further provides that the order allocation procedures for Market Makers and Order Book Officials, including the determination of time priority sequence, are the same as those for Floor Brokers as set forth in this proposed PCX Rule 6.75(f).⁵

2. LMM Guaranteed Participation

Proposed PCX Rule 6.75(f)(4)(A) provides that if the LMM establishes first priority during the vocalization process, the LMM will be entitled to buy or sell as many contracts as the Floor Broker may have available to trade. However, if the LMM does not establish first priority during the vocalization process, but does establish second, third, or some other time priority sequence, the LMM will be entitled to buy or sell the number of contracts equal to the LMM's guaranteed participation level (pursuant to PCX Rule 6.82(d)(2)) plus any contracts the Floor Broker has remaining after the bids or offers of other members with higher time priority have been satisfied.

Proposed PCX Rule 6.75(f)(4)(B) provides that if one or more orders in the limit order book have priority over an LMM's bid or offer, then the LMM's guaranteed participation level will apply only to the number of contracts remaining after all contracts in the limit order book that are at, or better than, the LMM's bid or offer have first been satisfied.

Proposed PCX Rule 6.75(f)(4)(C) provides that LMMs may waive some or all of their guaranteed participation on particular trades, but only to the extent that doing so is permissible under PCX Rule 6.86 (“Firm Quotes”). In such circumstances, if the LMM has waived the right to trade a certain number of option contracts, those option contracts will then become available for execution by the member (or members) who are next in priority sequence. For example, assume that there are 100 contracts available to sell, the LMM has guaranteed participation on 25 contracts, and the time priority sequence is as follows: the LMM is first, Market Maker #1 is second, and Market Maker #2 is third. If the LMM buys 20 contracts, the remaining 80 contracts will then be available for execution by Market Maker #1. If Market Maker #1 buys 40 of those contracts, then the remaining 40 contracts will be available for execution by Market Maker #2.

Proposed PCX Rule 6.75(f)(4)(D) provides that LMMs may direct some or all of their guaranteed participation to competing public orders in the trading crowd pursuant to PCX Rule 6.82(d).

Proposed PCX Rule 6.75(f)(4)(E) provides that bid and offering prices that are disseminated by an automatic quotation system are presumed to be the bid and offering prices of the LMM for purposes of PCX Rule 6.86 (“Firm

⁴ See Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

⁵ The PCX is currently reviewing the means by which it would be able to determine the identity of an individual who allocated a trade on the Exchange. Telephone conversation between,

Michael D. Pierson, Vice President, PCX, and Nancy J. Sanow, Assistant Director, Division, Commission, on March 22, 2002.

Quotes”) and PCX Rule 6.82(d)(2) (“Guaranteed Participation”).

Nevertheless, LMMs must vocalize all of their bids and offers in response to a call for a market and in acceptance of another member’s bid or offer. If a Floor Broker enters the trading crowd and vocalizes acceptance of a bid or offer that is then being disseminated, the LMM will be entitled to guaranteed participation on that transaction.

3. Parity Due to Simultaneous Bidding or Offering

Proposed PCX Rule 6.75(f)(5)(A) states that if the bids or offers of more than one member are made simultaneously, such bids or offers will be deemed to be on parity and priority will be afforded to them, insofar as practicable, on an equal basis, pursuant to PCX Rule 6.75(c). Accordingly, efforts will be made to assure that each member on parity receives an equal number of contracts, to the extent mathematically possible. One or more members on parity may waive their rights to some of their share (or shares) of contracts, but only to the extent that doing so is permissible under PCX Rule 6.86 (“Firm Quotes”). In such circumstances, the remaining number of contracts will be allocated, to the extent practicable, on an equal basis. However, an LMM who has received guaranteed participation on a transaction may not participate in the waived portion of the order unless there are contracts remaining to be allocated after all other members have been satisfied.

Proposed PCX Rule 6.75(f)(5)(B) provides that if the bids and offers of more than one member, including the LMM, are on parity, then the LMM’s guaranteed participation will first be applied to the entire order and the remainder of the order will be allocated, to the extent practicable, on an equal basis among the members other than the LMM who are on parity. The LMM may participate in such remainder of the order only if there are contracts remaining after all members other than the LMM have first been satisfied.

Proposed PCX Rule 6.75(f)(5)(C) states that if the LMM waives priority or guaranteed participation when the LMM and one or more other members are on parity, then the portion of the order that the LMM has waived will be made available to the other members who are on parity. For example, assume that there are 100 contracts available to trade, the LMM has guaranteed participation on 25 contracts, and two other members are on parity with the LMM. If the LMM waives guaranteed participation (but claims priority), the order will be divided into three shares

(consisting of 34 contracts, 33 contracts and 33 contracts). If the LMM waives all rights to participate in the trade, the order will be divided among the two other members who are on parity, in equal shares, each comprising 50 contracts.

Proposed Rule 6.75(f)(6) states that if the members of the trading crowd provide a collective response to a member’s request for a market in order to fill a large order, pursuant to Rule 6.37(f)(2), then if the size of the trading crowd’s market, in the aggregate, is less than or equal to the size of the order to be filled, the members of the trading crowd will each receive a share of the order that is equal to the size of their respective bids or offers. However, if the size of the trading crowd’s market exceeds the size of the order to be filled, that order will be allocated on a size pro rata basis, with the members of the trading crowd each receiving, to the extent practicable, the percentage of the order that is the ratio of the size of their respective bids or offers to the total size of all bids or offers. Specifically, in such circumstances, the size of the order to be allocated is multiplied by the size of an individual market participant’s quote divided by the aggregate size of all market participants’ quotes. For example, assume there are 200 contracts to be allocated, Market Maker #1 is bidding for 100, Market Maker #2 is bidding for 200 and Market Maker #3 is bidding for 500. Under the “size pro rata” allocation formula, Market Maker #1 will be allocated 25 contracts (200x100/800); ÷ Market Maker #2 will be allocated 50 contracts (200x200/800); ÷ and Market Maker #3 will be allocated 125 contracts (200x500 ÷ 800).

e. Procedures of Lead Market Makers

PCX Rule 6.82(d)(2) also currently provides, in part, that LMMs at their own discretion may direct their guaranteed participation to competing public orders in the crowd. The Exchange is modifying this provision to provide that LMMs may direct “some or all” of their guaranteed participation to competing public orders (*i.e.*, competing orders for the accounts of non-broker-dealers) in the crowd.

PCX Rule 6.82(d)(2) currently provides, in part, that LMMs “shall be allocated 50% participation in transactions occurring at their disseminated bids and/or offers in their allocated issue(s).” The Exchange is proposing to amend this rule so that it provides that LMMs “shall be allocated 50% participation (or such lesser percentage as the Options Allocation Committee may establish in allocating an issue to an LMM) in transactions

occurring at their disseminated bids and/or offers in their allocated issues.”

Finally, PCX Rule 6.82(e)(2)(a) currently provides, in part, that LMMs “shall have a right to participate pro rata with the trading crowd in trades that take place at the LMM’s principal bid or offer.” The Exchange is proposing to modify this provision to state that LMMs “have a right to participate with the trading crowd in trades that take place at the LMM’s principal bid or offer, pursuant to the priority rules set forth in PCX Rule 6.75.”

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)⁶ of the Act, in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, in that it is designed to promote just and equitable principles 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 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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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 number SR-PCX-2002-13 and should be submitted by April 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-7871 Filed 4-1-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45651; File No. SR-Phlx-2002-16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Amend Phlx Rule 237, "The eVWAP Morning Session"

March 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on March 7, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 21, 2002, the Phlx amended the proposal.³ The Phlx filed the

proposal pursuant to section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(5)⁵ thereunder as effecting a change in an existing order entry or trading system of the Phlx, which renders the proposal effective upon filing with the Commission. 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 amend Phlx Rule 237, "The eVWAP Morning Session," to expand the securities eligible for eVWAP trading to include additional component issues of the Standard and Poor's ("S&P") 500 index, as well as the NASDAQ 100 Index. The text of the proposed rule change is below. Additions are in italics; deletions are in brackets.

(b) Eligible Securities. The following securities will be eligible for execution in the System:

(i) [Exchange listed] *Any* component issues of the Standard & Poor's 500 index and/or *NASDAQ 100 Index* and any [Exchange listed] issue that has been designated by the compiler of such index for inclusion in such index.

(ii) No change.

(iii) No change.

* * * * *

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 Phlx 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 Phlx 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 Phlx proposes to expand the number of highly capitalized and actively traded securities eligible to participate in eVWAP trading pursuant to Phlx Rule 237. The eVWAP is a pre-opening order matching session for the

electronic execution of large-sized stock orders at a standardized volume weighted average price ("eVWAP Price").

The proposed expansion of eligible securities would expand the eligible issues to include those traded on the NASDAQ National Market that are reported to the NASDAQ Trade Dissemination Service ("NTDS") and are component issues of the S&P 500 index, and the NASDAQ 100 Index. This expansion would increase the number of securities available for eVWAP participation by 100 over the counter NASDAQ National Market Securities that are not presently eVWAP eligible. There are 78 securities that are component issues of the S&P 500 index, 43 that are only NASDAQ 100 Index component issues. A number of eVWAP participants have requested that the Phlx make these issues eligible for inclusion in the system pursuant to Phlx Rule 237 issue eligibility procedures.

The Exchange notes that the additional eligible securities may not be securities that the Exchange otherwise trades on its equity floor. It should be noted that Phlx has recently reinstated its over the counter unlisted trading privileges ("OTC/UTP") pilot program for NASDAQ National Market Securities.⁶ These securities may instead only be traded through the eVWAP System; thus, they would be traded on an unlisted trading privileges ("UTP") basis, but without trading during regular trading hours pursuant to regular trading rules and thus without the concomitant quoting obligations. Nevertheless, these eVWAP trades will be reported pursuant to the applicable reporting channel, in the case of NASDAQ National Market Securities the NTDS through the Exchange's communication linkage system supplied by TradinGear.

The Exchange notes that the additional securities that it has requested to be eligible for eVWAP matching are all high capitalization issues, enjoying active trading volume. The S&P 500 index is a key benchmark of large capitalization securities followed actively by institutional money managers and investment fiduciaries who seek to trade component issues relative to their index weightings. Certain of these market participants, among others, have indicated that they see considerable utility in extending the benefits now afforded to a limited group of listed issues to a more expansive eVWAP eligibility list, including all

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See March 20, 2002 letter from Murray L. Ross, Vice President and Secretary, Phlx to Joseph P. Morra, Special Counsel, Division of Market Regulation, SEC and attachments ("Amendment No. 1"). In Amendment No. 1, the Phlx made minor, technical changes to the proposed rule language. The Commission considers the 60-day abrogation

period to have begun on March 21, 2002, the date the Phlx filed Amendment No. 1.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(5).

⁶ See Securities Exchange Act Release No. 45182 (December 20, 2001), 66 FR 67609 (December 31, 2001)(SR-Phlx-2000-20).