

## V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the amendment 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 the 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-2001-46 and should be submitted by May 6, 2002.

## VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-NASD-2001-46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-9063 Filed 4-12-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45706; File No. SR-NYSE-2002-08]

### Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Changes to Audit Trail Account Identification Codes

April 8, 2002.

On January 23, 2002, the New York Stock Exchange, Inc. ("NYSE") 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 introduce a new identification code/audit trail account type, "Q," to indicate a proprietary trade by a member to cover the member's own error pursuant to Exchange Rule 134.

The proposed rule change was published for comment in the **Federal Register** on February 28, 2002.<sup>3</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>4</sup> and, in particular, the requirements of section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes the addition of the identifier "Q" for proprietary trades to cover the member's own error should protect investors by identifying error transactions and enhancing the Exchange's ability to conduct automated surveillance of NYSE members' error trading.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-NYSE-2002-08) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-9062 Filed 4-12-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45712; File No. SR-PCX-2001-13]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Its Auto-Ex System

April 9, 2002.

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 January 30, 2002, the Pacific Exchange, Inc. ("PCX" 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. PCX submitted Amendment No. 1 to the proposed rule change on April 9, 2002.<sup>3</sup> 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 rule changes that describe circumstances and Exchange procedures for disengaging the Exchange's Automatic Execution System for Options ("Auto-Ex") and increasing or decreasing Auto-Ex order size. The proposed changes include a procedure for documenting circumstances in which Auto-Ex is disengaged or the eligible order size is increased or decreased. The proposed rule changes also establish circumstances and procedures for declaring away markets unreliable. The

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

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

<sup>3</sup> In Amendment No. 1, the Exchange proposed the following: (1) To add rule text and a purpose statement discussion specifying the circumstances necessary for declaring away markets unreliable and the procedures to be followed in making such declarations; (2) to delete language from the rule text and purpose statement that defines unusual market conditions as including "other situations that create unusual trading conditions;" (3) amend the definition of large influx of orders to include an extraordinarily large options order on the PCX in place of the prior language that referred to an extraordinarily large order on an options exchange; and (4) to delete language from the rule text and purpose statement that describes the underlying quote feed as unreliable when there is no response to orders to buy or sell the underlying stock, or when Market Makers are unable to manually update their quotes. See letter from Cindy Sink, Senior Attorney, Regulatory Policy, PCX, to Deborah L. Flynn, Assistant Director, Division of Market Regulation, Commission, dated April 8, 2002 ("Amendment No. 1").

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</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> Securities Exchange Act Release No. 45462 (February 20, 2002), 67 FR 9341 (February 28, 2002).

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

text of the proposed rule change follows. Proposed new language is italicized; proposed deletions are in brackets.

#### Rule 6.28

- (a)–(b)—No change.
- (c)(1)–(5)—No change.

(6) Suspend the Automatic Execution System (“Auto-Ex”) pursuant to Rule 6.87(h)(3)(B). [for a period of time not to exceed five minutes if, because of an influx of orders or unusual market conditions or circumstances, the Floor Officials determine that such action is appropriate in maintaining a fair and orderly market. Whenever such action is taken, Floor Officials or senior Exchange Staff must immediately notify a Floor Governor. Thereafter, the suspension of Auto-Ex may be ended, or may be continued for more than five minutes, based on a determination of two Floor Officials and one Floor Governor (or a senior operations officer if no Floor Governor is available), with a 2/3 majority prevailing.]

(7)—No change.

(8) The Exchange may increase the permissible size of orders that may be automatically executed over the Auto-Ex system pursuant to Rule 6.87(h)(3)(C). [to up to 50 contracts, to be effected on a case-by-case basis in a particular option issue, or for all option issues, when two floor officials and one Floor Governor deem such an increase to be appropriate. Pursuant to this Rule, the ability to execute order of up to 50 contracts will only occur during high volume or high volatility emergency situations. At all other times, the order size for Auto-Ex will remain to be the number of contracts permitted under Rule 6.87.]

\* \* \*

#### Rule 6.87

- (a)–(g)—No change.

##### *(h) Suspension and Unusual Use of Auto-Ex.*

(1) Floor-Wide POETS System Malfunction.—No change.

(2) Non-Floor-Wide POETS System Malfunction. If POETS is inoperable and Market Makers are physically unable to update their quotations in an issue or issues at the same trading post or trading quad, two Floor Officials may declare a “fast market” and direct the OBO to turn off the Auto-Ex system in the affected issue or issues. Once the system malfunction has been corrected, two Floor Officials may re-start Auto-ex. If a POETS malfunction occurs but the Exchange is able to process and disseminate quotes accurately, two Floor Officials may decrease the guaranteed Auto-Ex size in one or more

*option issues pursuant to the procedures set forth in subsection (h)(3)(B).*

(3) Other Unusual Conditions.

*(A) Unusual Market Conditions. The unusual market conditions that may permit increasing or decreasing the size of orders that may be automatically executed over the Auto-Ex or suspending Auto-Ex pursuant to subsections (B) and (C) are caused by news announcements (e.g. announcements relating to earnings speculation, economic news, reports of mergers or takeovers, disasters, etc.). Unusual market conditions that would permit unusual use of Auto-Ex under this Rule include:*

*(i) High Volatility. High volatility occurs generally when a stock or the entire market is experiencing rapid and extreme price fluctuations usually accompanied by doublewide spreads.*

*(ii) Large Influx of Orders. A large influx of orders occurs when volume is two or more times the average daily volume in an issue. It may also occur when an extraordinarily large options order is executed on the PCX and reported.*

*(iii) Unreliable Quote Feed. The underlying quote feed is unreliable when the Exchange is unable to accurately collect, process and/or disseminate quotation data.*

*(B) Suspension of Auto-Ex. If there are other unusual market conditions not involving a POETS System malfunction, two Floor Officials may suspend Auto-Ex [in accordance with Rule 6.82(b).] for a period of time not to exceed five minutes if, because of unusual market conditions or circumstances, the Floor Officials determine that such action is appropriate in maintaining a fair and orderly market. Whenever such action is taken, Floor Officials or senior Exchange Staff must immediately notify a Floor Governor. Thereafter, the suspension of Auto-Ex may be ended, or may be continued for more than five minutes, based on a determination of two Floor Officials and one Floor Governor (or a senior operations officer if no Floor Governor is available), with a 2/3 majority prevailing.*

*(C) Unusual use of Auto Ex. Two Floor Officials may increase the size of orders that may be automatically executed over the Auto-Ex system up to 100 contracts or decrease the size of orders eligible for automatic execution in one or more option issues when they believe that unusual market conditions exist, provided that the decision is made for no more than one trading day. To the extent the conditions exist on the following trading day, two Floor Officials must review the situation again*

*and make an independent decision of whether to increase or decrease the Auto-Ex eligible order size for that subsequent day. Any decisions made by two Floor Officials to increase or decrease the Auto-Ex eligible order size for a particular option issue for two or more consecutive days will be reviewed by the Options Floor Trading Committee at its next regularly scheduled meeting. Whenever two Floor Officials decrease the size of orders eligible for automatic execution, the lowest number of contracts that may be established is five.*

*(D) Any suspension or unusual use of Auto-Ex must be documented pursuant to Rule 6.87(n).*

*(4) Declaring Away Markets*

*Unreliable. When a Floor Official determines that quotes from one or more particular markets in one or more options series are not reliable, the Floor Official may direct the senior person in charge of the Exchange’s control room to exclude the unreliable quotes from the Auto-Ex determination of the NBBO in the particular options series.*

*(A) Determining Unreliability. A Floor Official may determine that quotes in one or more particular options classes in a market are not reliable only under the following circumstances:*

*(i) A market’s quotes in a particular options class are not firm based upon direct communication to the Exchange from the market or the dissemination through OPRA of a message indicating that disseminated quotes are not firm; or*

*(ii) A market has directly communicated to the Exchange or otherwise confirmed that the market is experiencing systems or other problems affecting the reliability of its disseminated quotes.*

*(B) Procedures to Follow. If one of the factors set forth in subsection (4)(A) occurs, then the following procedures must be followed.*

*(i) First, an LMM contacts an Order Book Official (“OBO”) and requests that the away market be declared unreliable.*

*(ii) Second, the OBO contacts the control room and requests [a declaration] that the control room confirm with the away market that it is unreliable pursuant to subsection (4)(A).*

*(iii) Third, if the control room has confirmed that an away market is unreliable, then the OBO will contact a Floor Official and request a declaration that the away market is unreliable.*

*(iv) Fourth, the Floor Official reviews and verifies the circumstances and determines whether away market should be declared unreliable. The OBO notifies the control room that the away market is unreliable and should be removed from the NBBO calculation.*

(v) Fifth, the Floor Surveillance Unit (“FSU”) contacts the away exchange, and notifies the away market that one or more of its quotes have been removed from the NBBO calculation.

(vi) Sixth, the Floor Official will continue to monitor the away market that has been declared unreliable and notify the control room to return to firm mode when appropriate.

(C) Documentation Required. The following documentation is required when an away market is declared unreliable.

(i) The OBO must log the issues(s) and time of the LMM’s request for a declaration that the away market was unreliable.

(ii) The OBO must prepare an Unusual Activity Report (“UAR”) documenting the facts giving rise to the LMM’s request, the date, time, and duration of the exclusion and the reasons for placing the away market back into the NBBO calculation.

(iii) The Floor Official must sign the UAR.

(iv) The control room will maintain a log of the time the away market was taken out of the NBBO calculation and the time that the away market was placed back into the NBBO calculation.

(D) Duration of the Declaration. Any determination to exclude a market or any of its quotes from the Auto-Ex determination of the NBBO pursuant to subsections (4)(B)(i) or (ii) will expire at the end of the trading day, or at the time that the quotes are confirmed by the market to be reliable again, whichever occurs first. Exclusion of a market or its quotes from the Auto-Ex determination of the NBBO will be reported to Exchange member firms.(i)–(m)—No change.

(n) Documentation of Auto-Ex Use. The Exchange will document any action taken to suspend Auto-Ex, increase or decrease the size of Auto-Ex eligible orders or to operate Auto-Ex in a manner other than the usual manner with an Unusual Activity Report (UAR). The UAR will be signed by two Floor Officials and will state the system problem or market activity that led to the Floor Officials’ ruling. The UAR information will be recorded in the Floor Surveillance log, which will document the option issues affected by the action, the time the action was taken, the Exchange officials who undertook the action, and the reasons why the action was taken.

## 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

The proposed rule changes describe circumstances and Exchange procedures for disengaging the Exchange’s Auto-Ex and increasing or decreasing Auto-Ex order size. The proposed changes include a procedure for documenting circumstances in which Auto-Ex is disengaged or the eligible order size is increased or decreased. The proposed rule changes also establish circumstances and procedures for declaring away markets unreliable.

#### Background

The Pacific Options Exchange Trading System (“POETS”) is the Exchange’s automated trading system comprised of an options order routing system, an automatic execution system, an on-line limit order book system and an automatic market quote update system. Option orders may be sent to POETS via the Exchange’s Member Firm Interface (“MFI”). Market and marketable limit orders that are sent through the MFI will be executed by Auto-Ex if they meet the order type and size requirements designated by the Exchange. Orders executed on Auto-Ex receive the PCX’s disseminated market price or better. Auto-Ex may be set to provide automatic price improvement when the national best bid or offer (“NBBO”) is better than the PCX best bid or offer (“BBO”) by one trading increment. In addition, Auto-Ex may be set to execute inbound orders at the NBBO price regardless of whether it is only one trading increment better than the PCX BBO, i.e., orders may be executed at prices that may be multiple trading increments better than the then prevailing PCX BBO. Furthermore, Auto-Ex may be set to execute at improved prices regardless of whether the NBBO is locked or crossed. Auto-Ex

prevents inbound orders from being executed at prices inferior to the NBBO. The PCX designates the eligible order size—which may be between 20 and 100 option contracts—on an issue-by-issue basis.

#### Summary

Pursuant to a Commission order, the PCX is required to adopt rules that specify the circumstances under which the Auto-Ex system may be disengaged or operated in any manner other than the normal manner set forth in the Exchange’s rules.<sup>4</sup> The order also requires documentation of reasons for each decision to disengage Auto-Ex or to operate Auto-Ex in any manner other than the normal manner.

The Exchange proposes to modify PCX’s Automatic Execution System Rule (Rule 6.87) to include provisions regarding disengaging Auto-Ex and increasing or decreasing the Auto-Ex eligible order size. The proposed changes also include a procedure for documenting circumstances when Auto-Ex is disengaged or the eligible order size is increased or decreased. The proposed rules specify the unusual market conditions that will justify an increase or decrease of the established Auto-Ex size or a suspension of Auto-Ex. The proposed rules codify the procedures that must be followed in the event the eligible order sizes are increased or decreased or Auto-Ex is suspended. Additionally, the proposed rules require documentation in the event that Auto-Ex order sizes are increased or decreased or that Auto-Ex is suspended.<sup>5</sup>

#### Unusual Market Conditions

Proposed Rule 6.87(h)(3)(A) provides a definition of unusual market conditions that may permit suspending Auto-Ex or increasing or decreasing the size of orders that may be automatically executed over the Auto-Ex. Such unusual market conditions may be caused by news announcements (e.g., announcements relating to earnings speculation, economic news, reports of mergers or takeovers, disasters, etc.). Unusual market conditions that would permit unusual use of Auto-Ex under this Rule include the following:

(a) *High Volatility.* High volatility occurs generally when a stock or the

<sup>4</sup> See Securities Exchange Act Release No. 43268 (September 11, 2000) (Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Section IV.h(i)(bb)).

<sup>5</sup> PCX represents that the proposed rule concerning documentation of operation of Auto-Ex in a manner other than usual is similar to CBOE Rule 6.8, Interpretations and Policies .08.

entire market is experiencing rapid and extreme price fluctuations usually accompanied by doublewide spreads.

(b) *Large Influx of Orders.* A large influx of orders occurs when volume is two or more times the average daily volume in an issue. It may also occur when an extraordinarily large options order is executed on the PCX and reported.

(c) *Unreliable Quote Feed.* The underlying quote feed is unreliable when the Exchange is unable to accurately collect, process and/or disseminate quotation data.

#### *Suspending Auto-Ex*

The Exchange's current Rules 6.87(h)(1) and (2) permit suspension of Auto-Ex in the event of Floor-Wide and Non-Floor Wide POETS System Malfunction. Current PCX Rule 6.87(h)(3) permits the suspension of Auto-Ex in other unusual situations not involving POETS malfunction. For consistency and clarity, the Exchange proposes to move current Rule 6.28(c)(6) concerning suspension of Auto-Ex and place it in Rule 6.87(h)(3)(B). The rule has been renumbered but the text is unchanged. It provides that if there are unusual market conditions not involving a POETS System malfunction, two Floor Officials may suspend Auto-Ex for a period of time not to exceed five minutes if, because of unusual market conditions or circumstances, the Floor Officials determine that such action is appropriate in maintaining a fair and orderly market. Whenever such action is taken, Floor Officials or senior Exchange Staff must immediately notify a Floor Governor. Thereafter, the suspension of Auto-Ex may be ended, or may be continued for more than five minutes, based on a determination of two Floor Officials and one Floor Governor (or a senior operations officer if no Floor Governor is available).

#### *Increasing or Decreasing Auto-Ex Size*

For consistency and clarity, the Exchange proposes to move and revise current Rule 6.28(c)(8) (concerning the procedure for increasing the permissible size of orders that may be automatically executed over Auto-Ex up to 100 contracts) and place it in Rule 6.87(h)(3)(C). Proposed Rule 6.87(h)(3)(C) also addresses the procedure for decreasing the size of orders that may be automatically executed over Auto-Ex. The proposed procedure provides that two Floor Officials may: (1) Increase the size of orders that may be automatically executed over the Auto-Ex system up to 100 contracts; or (2) decrease the size of orders eligible for automatic execution.

Such an increase or decrease may be approved by two Floor Officials in one or more option issues when they believe that unusual market conditions exist, provided that the decision is made for no more than one trading day. To the extent the conditions exist on the following trading day, two Floor Officials must review the situation again and make an independent decision of whether to increase or decrease the Auto-Ex eligible order size for that subsequent day. Any decisions made by two Floor Officials to increase or decrease the Auto-Ex eligible order size for a particular option issue for two or more consecutive days will be reviewed by the Options Floor Trading Committee at its next regularly scheduled meeting. Whenever two Floor Officials decrease the size of orders eligible for automatic execution, the lowest number of contracts that may be established is five.

Additionally, the Exchange proposes to amend Rule 6.87(h)(2) to provide for decreasing the guaranteed Auto-Ex size in one or more option issues when a non floor-wide POETS malfunction occurs but the Exchange is able to process and disseminate quotes accurately. In such circumstances, two Floor Officials may decrease the guaranteed Auto-Ex size in one or more option issues pursuant to the procedures set forth in Rule 6.87(h)(3)(C).

#### *Declaring Away Markets Unreliable*

A Floor Official may determine that quotes in one or more particular options classes in a market are not reliable only when: (1) A market's quotes in a particular options class are not firm based upon direct communication to the Exchange from the market or the dissemination through OPRA of a message indicating that disseminated quotes are not firm; or (2) a market has directly communicated to the Exchange or otherwise confirmed that the market is experiencing systems or other problems affecting the reliability of its disseminated quotes.

If one or more of these factors occurs, then the following procedures must be followed. First, an LMM contacts an Order Book Official ("OBO") and requests that the away market be declared unreliable. Second, the OBO contacts the control room and requests a declaration that the away market is unreliable. Third, if the control room has confirmed that an away market is unreliable, then the OBO will contact a Floor Official and request a declaration that the away market is unreliable. Fourth, the Floor Official reviews and verifies the circumstances and determines whether away market

should be declared unreliable. The OBO notifies the control room that the away market is unreliable and should be removed from the NBBO calculation. Fifth, the Floor Surveillance Unit contacts the away exchange, and notifies the away market that one or more of its quotes have been removed from the NBBO calculation. Sixth, the Floor Official will continue to monitor the away market that has been declared unreliable and notify the control room to return to firm mode when appropriate.

The following documentation is required when an away market is declared unreliable: (1) The OBO must log the issues(s) and time of the LMM's request for a declaration that the away market was unreliable; (2) the OBO must prepare an Unusual Activity Report ("UAR") documenting the facts giving rise to the LMM's request, the date, time, and duration of the exclusion and the reasons for placing the away market back into the NBBO calculation; (3) the Floor Official must sign the UAR; and (4) the control room will maintain a log of the time the away market was taken out of the NBBO calculation and the time that the away market was placed back into the NBBO calculation.

Any determination to exclude a market or any of its quotes from the Auto-Ex determination of the NBBO pursuant to the proposed rule will expire at the end of the trading day, or at the time that the quotes are confirmed by the market to be reliable again, whichever occurs first. Exclusion of a market or its quotes from the Auto-Ex determination of the NBBO will be reported to Exchange member firms.

#### *Documentation*

Under the proposed rules, the Exchange will document any action taken to suspend Auto-Ex, increase or decrease the size of Auto-Ex eligible orders or to operate Auto-Ex in a manner other than the usual manner with an Unusual Activity Report ("UAR"). The UAR must be signed by two Floor Officials and must state the system problem or market activity that led to the Floor Officials' ruling. The UAR information will be recorded in the Floor Surveillance log, which will document the option issues affected by the action, the time the action was taken, the Exchange officials who undertook the action, and the reasons why the action was taken.

#### *2. Statutory Basis*

The Exchange believes that the proposed rule changes, as amended, are

consistent with section 6(b) of the Act,<sup>6</sup> in general, and further the objectives of Section 6(b)(5),<sup>7</sup> in particular, because they are designed to promote just and equitable principles of trade, to enhance competition 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, 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 were neither solicited nor received.

### **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 self-regulatory organization consents, the Commission will:

- (A) By order approve such 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, 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 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-2001-13 and should be submitted by May 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-9061 Filed 4-12-02; 8:45 am]

**BILLING CODE 8010-01-U**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-45714; File No. SR-Phlx-00-93]**

### **Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 4, 5, 6 and 7 to That Portion of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Not Granted Accelerated Approval Relating to Providing Automatic Executions for Public Customer Orders at the NBBO**

April 9, 2002.

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 January 15, 2002, March 1, 2002, March 8, 2002, and April 3, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") Amendment Nos. 4,<sup>3</sup>

5,<sup>4</sup> 6,<sup>5</sup> and 7,<sup>6</sup> respectively, to that portion of the proposed rule change not previously granted accelerated approval, as described in Items I, II, and III below, which Items have been prepared by the Phlx.<sup>7</sup> The proposed rule change and Amendment Nos. 1 and 2 thereto were granted partial accelerated approval and were originally published for comment in the **Federal Register** on December 14, 2000.<sup>8</sup> On September 18, 2001, the Phlx filed Amendment No. 3 to the proposed rule change.<sup>9</sup> The Commission is publishing this notice to solicit comments on Amendment Nos. 4, 5, 6, and 7 to the proposed rule change from interested persons.

<sup>4</sup> See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission dated February 28, 2002 ("Amendment No. 5"). In Amendment No. 5, the Exchange: (1) Clarified that the Exchange may determine to exclude quotes from its calculation of the NBBO on a series-by-series basis or issue-by-issue basis, or may determine to exclude all options quotes from an exchange, where appropriate; (2) represented that it maintains, on a daily basis, records of each instance in which it determines to exclude quotes from another exchange from the Exchange's calculation of the NBBO on a daily basis; and (3) stated that it will notify other exchanges of the determination to exclude its quotes from the Exchange's calculation of the NBBO and of any determination to re-include such exchange's quotes in the Exchange's calculation of the NBBO.

<sup>5</sup> See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 7, 2002 ("Amendment No. 6"). In Amendment No. 6, the Exchange proposed to amend the rule text to require the Exchange to maintain a record of each instance in which another exchange's quotes are excluded from the Exchange's calculation of the NBBO, and to notify such other exchange that its quotes have been so excluded.

<sup>6</sup> See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 2, 2002 ("Amendment No. 7"). In Amendment No. 7, the Exchange proposed to amend the rule text to provide that documentation of each instance in which another exchange's quotes are excluded from the Exchange's calculation of NBBO shall include: identification of the option(s) affected by such action; the date and time such action was taken and concluded; identification of the other exchange(s) whose quotes were excluded from the Exchange's calculation of NBBO; identification of the Chairman of the Options Committee, his designee, or two Floor Officials (as applicable) who approved such action; the reasons for which such action was taken; and identification of the specialist and the specialist unit.

<sup>7</sup> At the request of the Phlx, these sections have been revised to conform to subsequent amendments. Telephone conversation among Deborah Flynn, Assistant Director, Division, Commission, Jennifer Lewis, Attorney, Division, Commission, and Richard S. Rudolph, Counsel, Phlx, on February 21, 2002.

<sup>8</sup> See Securities Exchange Act Release No. 43684 (December 6, 2000), 65 FR 78237 ("Original Filing").

<sup>9</sup> See letter from Richard S. Rudolph, Counsel, Phlx to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 18, 2001 ("Amendment No. 3").

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

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

<sup>8</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, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 15, 2002 ("Amendment No. 4"). In Amendment No. 4, the Exchange proposes to revise its proposed procedures for determining when quotes from away markets are excludable from the calculation of the National Best Bid or Offer ("NBBO"). Amendment No. 4 supersedes and replaces Amendment No. 3 in its entirety.