

affiliates own 1% or more of any class of common equity securities of the subject company. Rule 2711(h)(1)(C) requires disclosure of any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of the publication of the research report or at the time of the public appearance.

The purpose of this filing is to correct an unintentional error that appeared in Amendment No. 2 to the initial proposed rule change seeking Commission approval of Rule 2711, which was filed with the Commission on May 2, 2002.⁶ Page 6 of Exhibit A to Amendment No. 2 incorrectly quotes the provisions of Rule 2711(h)(1)(C) and includes a paragraph (D) of Rule 2711(h)(1) which was not intended to be part of the final rule. Page 6 of Exhibit A to Amendment No. 2 shows the versions of paragraphs (h)(1)(C) and (D) as they were originally filed with the Commission on February 13, 2002. However, NASDR revised these provisions in Amendment No. 1 to the proposed rule change, which NASDR filed with the Commission on March 7, 2002.⁷ In Amendment No. 1, NASDR changed the wording of paragraph (h)(1)(C) and deleted paragraph (h)(1)(D) to conform these provisions to comparable provisions in the New York Stock Exchange ("NYSE") proposed rule change relating to research analyst conflicts of interest.⁸ The Commission published the correct version of Rule 2711(h)(1) for comment in the **Federal Register** on March 14, 2002.⁹

Unfortunately, Exhibit A to Amendment No. 2 showed the version of Rule 2711(h)(1)(C) and (D) as they were originally filed with the Commission, rather than the version of Rule 2711(h)(1)(C) as amended by Amendment No. 1 and published for comment in the **Federal Register**. NASDR submitted the incorrect language by mistake, and did not intend to revert Rule 2711(h)(1)(C) back to its original form or to reintroduce old paragraph (h)(1)(D).

Accordingly, NASDR is making this filing to correct this error so that the

⁶ See Letter from Philip Shaikun, Assistant General Counsel, NASDR, to James A. Brigagliano, Assistant Director, Division of Market Regulation ("Division"), Commission (May 2, 2002) ("Amendment No. 2").

⁷ See Letter from Thomas M. Selman, Senior Vice President, Investment Companies, Corporate Financing, NASDR, to Katherine A. England, Assistant Director, Division, Commission (March 7, 2002) ("Amendment No. 1").

⁸ See NYSE Rule 472(k)(1)(i)(c).

⁹ See Securities Exchange Act Release No. 45526 (March 8, 2002), 67 FR 11526, 11528 (March 14, 2002).

language of Rule 2711(h)(1) is consistent with the comparable NYSE rule language and reflects NASDR's true intent.

(2) Statutory Basis

NASDR believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest. NASDR believes that correcting the language of Rule 2711(h)(1) to reflect the language that was published for comment and that NASDR intended to adopt is consistent with the protection of investors and the public interest.

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

NASDR believes that the proposed rule change would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The proposed rule change is effective upon filing pursuant to section 19(b)(3)(A)¹⁰ of the Act and paragraph (f)(6) of Rule 19b-4¹¹ thereunder,¹² in that 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) by its terms, does not become operative for 30 days after the date of filing.¹³ 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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² As required under Rule 19b-4(f)(6)(iii), the NASDR provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission.

¹³ The NASD notes that the proposed rule change does not alter the effective dates of Rule 2711 (as amended by this proposed rule change) that the Commission approved on May 10, 2002.

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 proposal 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 number SR-NASD-2002-74 and should be submitted by July 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14779 Filed 6-11-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46029; File No. SR-PCX-2002-30]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Firm Quote Size for Disseminated Market Quotes for Customer Orders Entered on the Exchange

June 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 May 30, 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 and II

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

The PCX is proposing to amend its rules relating to the firm quote size applicable to disseminated market quotes for customer orders entered on the Exchange. Specifically, the Exchange proposes to make a systems change to allow the true size of customer orders in the limit order book to be disseminated through the Options Price Reporting Authority ("OPRA") as the PCX firm quote size whenever such orders represent the best bid or offer on the Exchange.

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

* * * * *

PACIFIC EXCHANGE, INC.

RULES OF THE BOARD OF GOVERNORS

Text of the Proposed Rule Change:

¶ 5221 Firm Quotes

Rule 6.86(a)–(b)—No change.

(c) Obligations of Responsible Brokers or Dealers

(1) Customer Orders. Except as provided in subsection (d), below, each Responsible Broker or Dealer is obligated to execute any customer order in a listed option series in an amount up to the quotation size established by rule and periodically published by the Exchange. The minimum quotation size established by rule and published by the Exchange for customer orders will be *one contract* [20 contracts] for each option series.

(A) *Dissemination of the Size of Orders in the Limit Order Book. If one or more orders in the limit order book represent the best bid or offer on the Exchange, then the Exchange will disseminate via OPRA the aggregate size of such order or orders as the firm quote size for which the Responsible Broker or Dealer will be firm. In such circumstances:*

(i) If one or more additional limit orders at the same price to buy or sell the same series of option contracts are entered into the limit order book for representation on the Exchange, then the firm quote size then being disseminated in that series will be

automatically increased to reflect the adjusted size of such orders in the limit order book at that price; and

(ii) If the number of contacts in the limit order book at the same price to buy or sell the same series of option contracts has been reduced because of an execution or cancellation of one or more orders in the limit order book, then the firm quote size then being disseminated in that series will be automatically decreased to reflect the adjusted size of such orders in the limit order book at that price.

* * * * *

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 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 III 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 Exchange currently complies with Rule 11Ac1–1 under the Act³ ("Quote Rule"), by having established by rule and periodically publishing the quotation size for which each Responsible Broker or Dealer on the Exchange is obligated to execute an order to buy or sell an option series that is a reported security at its published bid or offer. Specifically, the minimum quotation size established by rule and periodically published by the Exchange for "customer" orders is currently twenty contracts for each option series. In addition, the minimum quotation size established by rule and periodically published by the Exchange for "broker-dealer orders" is currently one contract for each option series.

The Exchange proposes to amend its PCX Rule 6.86(c)(1), which relates to the obligations of Responsible Brokers or Dealers⁴ with respect to customer

³ 17 CFR 240.11Ac1–1. See generally Securities Exchange Act Release No. 44145 (April 2, 2001), 66 FR 18662 (April 10, 2001) (order approving rule changes relating to the application of the Quote Rule to options trading).

⁴ PCX Rule 6.86(a)(2) provides, in part, that "the term 'Responsible Broker or Dealer' means that with respect to any bid or offer for any listed option made available by the Exchange to quotation

orders. PCX Rule 6.86(c)(1) currently provides:

"Except as provided in subsection (d), * * * each Responsible Broker or Dealer is obligated to execute any customer order in a listed option series in an amount up to the quotation size established by rule and periodically published by the Exchange. The minimum quotation size established by rule and published by the Exchange for customer orders will be 20 contracts for each option series."

The Exchange proposes to amend the second sentence of this rule, so that it would state: "The minimum quotation size established by rule and published by the Exchange for customer orders will be one contract for each option series."

The Exchange notes that its LMMs are currently obligated to "[h]onor guaranteed markets, including markets required by PCX Rule 6.86, Firm Quotes, and any better markets pledged during the allocation process."⁵ Since all LMMs on the PCX have pledged during the allocation process to make markets for at least twenty contracts (and in some cases more than twenty contracts), LMMs would continue to be required to disseminate, at a minimum, firm quotes for at least twenty contracts (in issues currently allocated to such LMMs), unless such pledges are rescinded.⁶ Accordingly, LMM quotes generally would be for at least twenty contracts or such other minimum number that the LMM has pledged to honor during the allocation process. The effect of the proposed rule change, however, is that if the Exchange is disseminating a quote on behalf of a customer order, and that order is for less than twenty contracts, the Exchange would no longer disseminate twenty contracts on behalf of that customer order, and instead, would disseminate the order's true size. Consequently, in such circumstances, the Responsible Broker or Dealer will no longer be required buy or sell option contracts at the price established by a customer order for less than twenty contracts.⁷

vendors, the Lead Market Maker ("LLM") and any registered Market Makers constituting the trading crowd in such option series will collectively be the Responsible Broker or Dealer to the extent of the aggregate quotation size specified."

⁵ See PCX Rule 6.82(c)(2).

⁶ The Exchange also notes that with respect to option issues to be allocated in the future, LMMs may commit to making minimum size markets in an amount other than twenty contracts, but these pledges will apply only if the Options Allocations Committee accepts them.

⁷ For example, assume the LMM is disseminating a market of 2 bid, 2.20 asked, in a particular option series for which the guaranteed size is twenty

The Exchange is also proposing to adopt new subsection (A) to Rule 6.86(c)(1), relating to the dissemination of the size of orders in the Exchange's limit order book. Currently, if the best bid or offer on the Exchange is represented by one or more orders in the limit order book, and the aggregate size of such order or orders is less than the minimum customer firm quote size (*i.e.*, twenty contracts), then the Exchange disseminates the minimum customer firm quote size via OPRA as its firm quote. Under the proposal, if one or more orders in the limit order book represent the best bid or offer on the Exchange, then the Exchange would disseminate via OPRA the aggregate size of such order or orders as the firm quote size for which the Responsible Broker or Dealer would be firm.⁸

In that regard, the Exchange proposes to increase or decrease the firm quote size in such circumstances as follows: First, if one or more additional limit orders at the same price to buy or sell the same series of option contracts are entered into the limit order book for representation on the Exchange, then the firm quote size then being disseminated in that series would be automatically increased to reflect the adjusted size of such orders in the limit order book at that price. Second, if the number of contacts in the limit order book at the same price to buy or sell the same series of option contracts has been reduced because of an execution or cancellation of one or more orders in the limit order book, then the firm quote size then being disseminated in that series would be automatically decreased to reflect the adjusted size of such orders in the limit order book at that price.

The Exchange believes that the proposed rule change would encourage

contracts. Then assume that an incoming customer order to buy one contract for 2.10 is entered on the Exchange, making the new best bid and offer on the Exchange 2.10 bid, 2.20 asked. Under the current rule, the Exchange disseminates twenty contracts as the size of the 2.10 bid. If a market order to sell twenty contracts is then entered in that series, the Responsible Broker or Dealer (generally, the LMMs) is obligated to buy the balance of 19 contracts at a price of 2.10. The risk from these types of situations discourages LMMs from increasing their guaranteed sizes (whether for Auto-Ex or Firm Quote Rule purposes) because the greater their guaranteed sizes, the greater the potential liability. Under the proposed rule change, the Exchange will disseminate the true size of the customer order for one contract and the Responsible Broker or Dealer will no longer be obligated to "fill in" the difference between one contract and the guaranteed size.

⁸ The Exchange notes that pursuant to PCX Rule 6.75(a)–(b), orders in the limit order book have priority over all other bids or offers at the same price then being represented at the trading post. Accordingly, such orders in the limit order book must be filled in their entirety before other bids or offers at the same price are filled.

deeper and more liquid markets on the Exchange. Specifically, the proposed rule change would reduce the risk that LMMs and Market Makers would be obligated to buy or sell option contracts at prices established by other investors, and, therefore, they would face less liability when increasing their guaranteed Auto-Ex or firm quote sizes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁹ in general, and furthers the objectives of section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest.

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

The PCX does not believe that the proposed rule change would 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

No written comments were solicited or received with respect to the proposed rule change.

III. 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

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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 offices of the Exchange. All submissions should refer to File No. SR-PCX-2002-30 and should be submitted by July 3, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

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.¹¹ In particular, the Commission believes the proposed rule change is consistent with the section 6(b)(5) of the Act¹² requirement that the rules of an exchange be designed to facilitate transactions in securities, promote just and equitable principles of trade, 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 notes that the proposal to change the firm quote size for customer orders from twenty contracts to one contract for each option series is consistent with Rule 11Ac1–1(d) under the Act.¹³ The Commission also believes that the Exchange's proposal to disseminate the actual size of customer limit orders whenever such orders are the best bid or offer on the Exchange should help to increase transparency by providing more accurate quotation information, which is consistent with section 11A of the Act.¹⁴ Finally, the Commission understands that the proposed rule change is a step towards implementing the Exchange's plan to disseminate quotations with actual size on a floor-wide basis in the near future, which should further increase transparency and enhance the quality of PCX's quotation information that is disseminated to the public.

The Commission finds good cause, consistent with section 19(b)(2) of the Act,¹⁵ to approve the proposed rule

¹¹ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

¹³ 17 CFR 240.11Ac1–1(d).

¹⁴ 15 U.S.C. 78k–1. The Commission notes that in Section 11A(a)(1)(C)(iii) of the Act, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability of information with respect to quotations for securities. 15 U.S.C. 78k–1(a)(1)(C)(iii).

¹⁵ 15 U.S.C. 78s(b)(2).

change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that the PCX has represented that it is technologically capable of implementing the proposal immediately upon approval from the Commission. The Commission believes that accelerated approval of this proposal should permit the PCX to immediately begin to disseminate quotes with actual size when customer limit orders represent the best price on the Exchange, which should reflect more accurate trading interest. Accordingly, the Commission finds that there is good cause, consistent with section 19(b)(2) of the Act,¹⁶ to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-PCX-2002-30) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14717 Filed 6-11-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46040 ; File No. SR-Phlx-2002-27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Committee Voting Procedures

June 6, 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 April 23, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 Phlx proposes to modify the voting procedures followed by the standing and special committees of the Phlx's Board of Governors ("Committees") to allow the Committees to take action in cases where a quorum attends a Committee meeting, but a majority of members recuse themselves or abstain from the vote of the Committee, provided that at least two Committee members vote. The text of the proposed rule change appears below. New language is italicized; deleted language is in brackets.

By-Law Article X, Section 10-3; Proceedings of Special and Standing Committees

(a) Except as herein otherwise prescribed, and subject always to the control and supervision of the Board of Governors, each Standing Committee and Special Committee shall determine the manner and form in which its proceedings shall be conducted, and shall make such regulations for its government as it shall deem proper and may act at a meeting or without a meeting, and through a quorum composed of a majority of all its members then in office. Except as otherwise specifically provided in the by-laws or rules, the decision of a majority of those [present] *voting* at a meeting at which a quorum is present, *provided at least two vote*, [or the decision of a majority of those participating when at least a quorum participates.] shall be the decision of the Committee.

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

In its filing with the Commission, the 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 represents that the purpose of the proposed rule change is to improve the functioning and efficiency

of Committees. Specifically, the proposal will permit the Committees to take action in cases where a quorum attends a Committee meeting, but a majority of members recuse themselves or abstain from the vote of the Committee, provided that at least two Committee members vote.

Currently, the Phlx By-laws state that "a decision of a majority of those present at a meeting at which a quorum is present, or the decision of a majority of those participating when at least a quorum participates, shall be the decision of the Committee"³ (together, the "Present Approval Scenarios"). A quorum is "a majority of all [of the Committee's] members then in office."⁴ The Present Approval Scenarios both require a majority of the Committee to vote on a motion for it to have any chance of approval.⁵ According to the Phlx, this may delay or preclude a Committee from taking action, thereby reducing the responsiveness of a Committee to rapidly changing market conditions and limiting overall Committee effectiveness.

The Phlx believes that the proposed rule change should help to increase Committee responsiveness and effectiveness by allowing for Committee action when a quorum attends a meeting, but the subject matter of the Committee action requires Committee members to recuse themselves or abstain from voting on the proposed action. However, in no case would Committee action result from the vote of one Committee member alone because the proposal requires at least two Committee members to vote to have a valid Committee action. Under the proposed rule change, the Exchange considers Committee members who recuse themselves or abstain from voting to be present for purposes of a quorum.

³ See Phlx By-law Article X, Section 10-3(a).

⁴ *Id.*

⁵ For example, if five Committee members attend a meeting of a nine member Committee, those five members constitute a quorum because five is a majority of nine. If a proposal comes before the Committee and three of the members recuse themselves, then two Committee members are left to decide the matter. Under the Present Approval Scenarios, even though a quorum is present, (recused members count as present, but not participating) the Committee could not take action because it could not obtain an affirmative vote of the majority of the quorum because only two members may vote and three votes are needed to constitute a majority of the quorum. Under the proposed rule change, those two members could take action if both of them voted for the proposal because the Committee would be able to take action when a majority of those voting (two are voting and a majority of two is two) when a quorum is present and at least two vote.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.