

and (C) below, of the most significant aspects of such statements.<sup>2</sup>

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

OCC's clearing members have requested that expiring options be subject to exercise-by-exception ("ex-by-ex") processing<sup>3</sup> even if no trading takes place on the trading day before expiration. OCC's clearing members have advised OCC that it would be easiest for them operationally if OCC used the last sale price for the underlying security for the ex-by-ex process rather than remove the option from the process. Accordingly, under the proposed rule change OCC will use the last sale price for the underlying security to determine the closing price even if the price reflects sales that occurred prior to the last trading day before expiration.

In addition, the proposed rule change allows OCC to fix a closing price as it deems appropriate where there is no available last sale price (e.g., because the underlying security is not being traded), where the last sale price is stale (e.g., because there have been no transactions in the underlying security for a lengthy period), or under other similar circumstances. This will allow OCC to use the last reported sales price generally but also will allow OCC to obtain prices from other appropriate sources that provide a basis for determining the market value of the underlying security.

The proposed rule change will also preserve OCC's ability to not fix a closing price in situations where it believes that it cannot derive a correct market price for the underlying security and to remove it from ex-by-ex processing. OCC has informed the Commission that if it fixes a closing price or determines to remove an underlying security from the ex-by-ex process, it will promptly notify its clearing members through an information memorandum or other communication medium so the clearing members can take appropriate action.

Finally, revised Rule 805 will allow OCC to refer to such markets as it designates for use in the ex-by-ex process rather than only referring to the

underlying security's primary market. OCC believes that the term primary market may in some cases (now or in the future) be unclear.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act<sup>4</sup> and the rules and regulations thereunder in that it promotes the prompt and accurate clearance and settlement of equity and index options.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

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

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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

Section 17A(b)(3)(F) of the Act<sup>5</sup> requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with this obligation because it should increase the number of options that are subject to the efficiencies of ex-by-ex processing. As a result, the proposed rule change should facilitate the prompt and accurate clearance and settlement of options transactions by providing promptness and precision in the exercise of in-the-money options if no trading takes place in the underlying security on the day before expiration.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice should immediately increase efficiency in processing expiring options that are in-the-money if no trading takes place in the underlying security on the trading day before expiration.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all subsequent 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-98-14 and should be submitted by March 22, 1999.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (File No. SR-OCC-98-14) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-41083; File No. SR-PCX-98-57]

**Self-Regulatory Organization; Pacific Exchange, Inc.; Order Approving Proposed Rule Change to Amend Equity Floor Procedure Advice 2-C To Remove an Exception Regarding Trade Reporting Responsibilities**

February 22, 1999.

**I. Introduction**

On November 6, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Equity Floor Procedure Advice 2-C to remove an exception regarding trade reporting responsibilities. The proposed rule change was published for comment in the **Federal Register** on January 15,

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>3</sup> OCC's ex-by-ex procedures presume that a clearing member desires to exercise all options that are in-the-money by a specified threshold. According to OCC, the ex-by-ex processing procedures have been developed solely as an administrative convenience for its clearing members (See Interpretation .02 to Rule 805).

<sup>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</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.

1999.<sup>3</sup> The Commission received no comments on the proposal.

## II. Description of the Proposal

Currently, PCX Rule 5.12 states that "The seller shall be responsible for transactions being promptly recorded by the floor reporters." This requirement is subject to two exceptions in Equity Floor Procedure Advice 2-C, the second of which states that "Transactions in local issues in which the specialist acts as the buyer and the seller is on the opposite trading floor<sup>4</sup> are to be promptly reported to the tape by the specialist. The seller is required to submit a 'goldenrod' ticket<sup>5</sup> to report the transaction for clearing purposes only."

The PCX proposed to delete the second exception to Rule 5.12 in Equity Floor Procedure Advice 2-C so that the general requirement in Rule 5.12 of seller responsibility shall apply. The Exchange believes that the conditions underlying the original exception have changed and that there is no longer any reason to exempt these types of transactions from the basic requirement. The Exchange believes that electronic links between the PCX's two trading floors allow sellers to record promptly transactions in local issues in which the specialist acts as the buyer even when the seller is on the opposite trading floor.<sup>6</sup> Deleting this exception will make the obligation to report transactions consistent with the general requirement that sellers report the trades.

## III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act<sup>7</sup> and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(5) and 11A(a)(1)(C)(iii) of the Act.<sup>8</sup> Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed to perfect the mechanism of a

free and open market, to promote just and equitable principles of trade, and, in general to protect investors and the public interest.<sup>9</sup> In section 11A(a)(1)(C)(iii), 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 to brokers, dealers, and investors of information with respect to transactions in securities.<sup>10</sup>

By deleting the second exception to PCX Rule 5.12, the Exchange is proposing that transaction in local issues in which the specialists acts as the buyer and the seller is on the opposite trading floor are to be promptly reported to the tape by the seller. The PCX maintains that the second exception provided in Equity Floor Procedure Advice 2-C was designed to facilitate the proper recording of transactions when communications between the two trading floors was less efficient (under the exception, a trade is required to be reported where it was executed). According to the PCX, electronic links between the Exchange's two trading floors should ensure that the seller is aware of the execution in a timely manner and, therefore, able to assume responsibility for transactions being promptly recorded by the floor brokers.<sup>11</sup>

In light of enhanced technology between PCX's Los Angeles and San Francisco trading floors, the Commission believes that subjecting transactions in local issues in which the specialist acts as the buyer and the seller is on the opposite trading floor to the requirements of the general rule, Rule 5.12, is consistent with the provisions of the Act discussed above because imposing the transaction reporting requirements should promote the rapid and efficient reporting of transactions to the tape by applying those requirements generally to sellers.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-PCX-98-57) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41081, File No. SR-Phlx-98-46]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc., Order Approving Proposed Rule Change Amending Rule 229, Philadelphia Stock Exchange Automatic Communication and Execution System, Raising the Minimum Order Delivery Requirement for Specialists from 1099 Shares to 2099 Shares

February 22, 1999.

#### I. Introduction

On November 12, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), 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 amend Phlx Rule 229 raising the minimum order delivery requirement for specialists from 1099 shares to 2099 shares on the Exchange Automatic Communication and Execution System ("PACE").<sup>3</sup> Notice of the proposed rule change appeared in the **Federal Register** on January 7, 1999.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Specialists are required to accept orders sent by members for automatic execution on the PACE system up to the minimum order delivery requirement set forth in Phlx Rule 229. The Exchange proposed to amend Phlx Rule 229 to raise the minimum order delivery requirement for specialists from 1099 shares to 2099 on the PACE system. Thus, specialists will be required to accept PACE orders of up to 2099 shares.

<sup>13</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> PACE is the Exchange's automatic order routing and execution system for securities on the equity trading floor. See Phlx. Rule 229.

<sup>4</sup> See Securities Exchange Act Release No. 40842 (December 28, 1998), 64 FR 10611.

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

<sup>3</sup> See Exchange Act Release No. 40888 (January 6, 1999), 64 FR 2694.

<sup>4</sup> The PCX maintains trading floors in two locations, Los Angeles and San Francisco.

<sup>5</sup> A goldenrod ticket is a ticket that is printed on gold colored paper. It is used for clearing transactions. If a trade is properly reported to the tape on a pink ticket, but the parties have not been identified, a goldenrod ticket will be issued with the parties have been identified for clearing purposes. Telephone conversation between Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, and Robert B. Long, Attorney, Division of Market Regulation, Commission, on February 5, 1999.

<sup>6</sup> *Id.*

<sup>7</sup> In approving this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78(k)-1(a)(1)(C)(iii).

<sup>11</sup> See telephone conversation discussed in note 5 above.

<sup>12</sup> 15 U.S.C. 78s(b)(2).