

NASD Dispute Resolution also proposes to amend Rule 10312 to provide, as in Rule 10308, that the Director's authority to remove arbitrators does not cease with the first pre-hearing or hearing session. There are two restrictions on the exercise of this authority, however, once such sessions have begun. Proposed Rule 10312(d)(2) provides that, after the earlier of the first pre-hearing conference or the first hearing, the Director may remove an arbitrator based only on information not known to the parties when the arbitrator was selected. This provision is intended to prevent parties from raising challenges late in the process which could have been raised at the outset. Rule 10312(d)(2) also will provide that the Director's authority under this subparagraph may only be exercised by the Director or by the President of NASD Dispute Resolution.<sup>14</sup>

Finally, NASD Dispute Resolution proposes to amend Rule 10312(e) consistently with the above changes, to delete language limiting the time within which the Director may remove arbitrators for cause; and Rule 10312(f) is deleted as no longer necessary in light of the proceeding changes.

## 2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,<sup>15</sup> which requires, among other things, that the Association's rules must 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. The NASD believes that the proposed rule change will protect the public interest by providing a procedure to remove an arbitrator for sufficient cause shown at any time in an arbitration, where the challenge is based on information not known to the parties at the time of the arbitrator's appointment.

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

NASD Dispute Resolution does not believe that the proposed rule change will result in any burden on competition that it 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 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 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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-00-34 and should be submitted by October 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43293; File No. SR-PCX-99-36]

### Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Options Trading Rules

September 14, 2000.

## I. Introduction

On October 1, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "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 modify its options trading rules. Amendment No. 1 was filed with the Commission on March 28, 2000.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on April 4, 2000.<sup>4</sup> No comments were received on the proposal. This order approves the proposal, as amended.

## II. Description of the Proposal

The proposed rule change would make the following changes to the text of the PCX rules on options trading.

### A. Definition of Term "Option Issue"

The proposal would adopt new Rule 6.1(b)(12) to define the term "option issue" as "the option contract overlying a particular underlying security." The Exchange notes that the commonly-used term "issue" appears in several locations in the PCX Rules.<sup>5</sup> The Exchange believes that the term "issue" means the same as "option" or "option contract" when used, for example, as in PCX Rule 6.65(a), which states: "Trading on the Exchange in any *option contract* shall be halted or suspended

<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 withdrew the proposed changes to PCX Rule 6.6 because the changes were previously made and approved in Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999). See letter from Michael D. Pierson, Director-Regulatory Policy, PCX, to Heather Traeger, Attorney, Division of Market Regulation, SEC, on March 27, 2000 ("Amendment No. 1").

<sup>4</sup> Securities Exchange Act Release No. 42590 (March 29, 2000), 65 FR 17690.

<sup>5</sup> See, e.g., PCX Rule 6.8 Com. .08(a) ("If a firm desires to facilitate customer orders in the XYZ option *issue* \* \* \*"); PCX Rule 6.28(a)(9) ("the permissible size of orders that may be automatically executed" may be increased "in a particular *issue*, or for all option *issues*. \* \* \*"); PCX Rule 6.82(e) ("[t]he allocation of option *issues* to LMMs shall be effected by the Options Allocation Committee. \* \* \*").

March 14, 2000 meeting. See *supra* note 8. The word "addition" was removed from this sentence and replaced with the word "deletion." Telephone conversation between Jean I. Feeney, Special Advisor to the President, NASD Dispute Resolution, and Joseph Corcoran, Attorney, Division, Commission, on September 14, 2000.

<sup>14</sup> Id.

<sup>15</sup> 15 U.S.C. 78o-3(b)(6).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

whenever \* \* \*.” However, the Exchange believes that the use of the terms “option” and “option contract” would often result in ambiguities that the use of “issue” would not create. While the term “class of options” is used in many PCX Rules to refer generally to options overlying a particular underlying security,<sup>6</sup> the Exchange believes that the use of the term “class” can be ambiguous because it may refer either to a “put class” or a “call class.”<sup>7</sup> Accordingly, the proposed rule change would formally adopt the definition of the term “option issue.”

### *B. General Rules Applicable to Options Trading*

PCX Rule 6.1 sets forth a list of general PCX trading rules that are applicable, by cross-reference, to Exchange transactions in option contracts. Most of these rules relate primarily to the trading of equity securities on the Exchange. The proposed rule change would remove PCX Rules 5.2(a), 5.6(a)–(c), 5.8(d), 5.8(h), 5.12(a) and 5.13(a)–(b) from that list. Each of the cross-references to be removed is discussed below:

- PCX Rule 5.2(a)—“Types of Orders.”<sup>8</sup> The Exchange believes that the first part of this rule—the part stating that all orders on the Exchange must be “day,” “immediate or cancel” or “good ‘til canceled”—applies to options trading, and accordingly, the proposed rule change would adopt PCX Rule 6.62, Commentary .01, to incorporate this part of the rule into the rules on options trading. However, the Exchange believes that the remainder of

PCX Rule 5.2(a) either does not apply to options trading<sup>9</sup> or is superfluous.<sup>10</sup>

- PCX Rule 5.6(a)—“Bids—Offers—Quotations.”<sup>11</sup> The Exchange believes that PCX Rule 6.74<sup>12</sup> adequately covers the meaning of bids and offers as applied to options trading. Further the Exchange believes that the part of PCX Rule 5.6 covering the display of bids and offers on other market centers is superfluous in light of PCX Rule 6.73, which provides the requirements for bids and offers to have standing on the Options Floor.<sup>13</sup> Moreover, bids and offers are not displayed on the Options Floor for Intermarket Trading System (“ITS”) purposes.

- PCX Rule 5.6(b)—“Regular Way.”<sup>14</sup> The Exchange believes that the current cross-reference to this equity trading rule is also superfluous because, unlike settlement of equity securities, settlement of option contracts is not based on a distinction between “regular way” and “non-regular way.”

- PCX Rule 5.6(c)—“All or None.”<sup>15</sup> The Exchange believes that the cross-reference to this equity trading rule is erroneous and inconsistent with current practices. For example, assume that a floor broker who is holding an order to

<sup>9</sup> “GTX” orders are not recognized on the Options Floor. See PCX Rule 5.25(f) (“GTX Orders Under P/COAST”).

<sup>10</sup> The Exchange believes that the order ticket requirement of PCX Rule 5.2(a) is superfluous because current PCX Rules 6.67–6.69 expressly cover the use of order tickets for option orders.

<sup>11</sup> PCX Rule 5.6(a) states: “Bids and offers shall be for one trading unit or multiples thereof to constitute an Exchange quotation. Bids and offers in other market centers which may be displayed on the Floor for the purpose of ITS or other purposes shall have no standing in the trading crowd on the Floor.”

<sup>12</sup> PCX Rule 6.74 states: “Unless otherwise specified, all bids or offers made on the floor shall be deemed to be for one option contract unless a specific number is expressed in the bid or offer. A bid or offer for more than one option contract shall be deemed to be for that amount or any lesser number of option contracts, unless specified otherwise.”

<sup>13</sup> PCX Rule 6.73 states: “Bids and offers to be effective must be made at the post by public outcry, except that bids and offers made by the Order Book Official shall be effective if displayed in a visible manner in accordance with PCX Rule 6.55. All bids and offers shall be general ones and shall not be specified for acceptance by particular members.”

<sup>14</sup> PCX Rule 5.6(b) states: “Bids and offers made without stated conditions shall be considered to be ‘regular way.’ ‘Regular way’ bids or offers have priority over conditional bids or offers.”

<sup>15</sup> PCX Rule 5.6(c) states: “A bid or offer may be made ‘all or none’; however, regular bids or offers at equal or better prices shall have priority. No ‘all or none’ transaction in round lots may be effected unless all regular bids or offers at equal or better prices are executed thereby or simultaneously or unless the holders of such regular bids or offers consent thereto. All bids and offers, unless specifically made ‘all or none,’ shall be subject to split-up without objection except that in no case may a division of stock be made of less than round lots except by mutual consent.”

sell twenty option contracts enters a trading crowd and calls for a market. Next, assume that there are two responses: (1) A floor broker holding an “all or none” order for twenty contracts for a customer bids \$3, and (2) a market maker bids \$3. Under current practices and consistent with PCX Rule 6.75(a), if the broker were first to vocalize a bid, the broker would have first priority to execute the order.<sup>16</sup> However, if PCX Rule 5.6(c) were applied, the market maker’s bid would have priority, even if it were made second in sequence. The Exchange believes that PCX Rule 6.75 should prevail over PCX Rule 5.6(c), in accordance with current practices.

- PCX Rule 5.8(d)—“Simultaneous Bids and Offers.”<sup>17</sup> The Exchange notes that simultaneous bids and offers are not recognized in the general rules on priority of bids and offers for options contracts. The Exchange believes that PCX Rules 6.75 and 6.76 are exhaustive and that the cross-reference to Rule 5.8(d) is erroneous.

- PCX Rule 5.8(h)—“Marking Stop Loss Orders.”<sup>18</sup> This rule covers the manual handling of stop loss orders. The Exchange believes that the procedure covered by this rule is unnecessary and that the responsibility of floor brokers to use due diligence in their handling of orders, as codified in the rules on option trading, is sufficient.<sup>19</sup>

- PCX Rule 5.12(A)—“Seller Responsible for Recording.”<sup>20</sup> The Exchange believes that the specific procedures currently set forth for reporting options transactions—codified in PCX Rule 6.69 and OFPA G–12—adequately address this procedure and that the cross-reference to PCX Rule 5.12 is unhelpful and unnecessary.

- PCX Rule 5.13(a)–(b)—“Comparisons.”<sup>21</sup> The Exchange

<sup>16</sup> PCX Rule 6.75(a) provides in part that “If two or more bids represent the highest price \* \* \* priority shall be afforded to such bids in the sequence in which they are made.”

<sup>17</sup> PCX Rule 5.8(d) states: “When bids or offers are made simultaneously, or when it is impossible to determine clearly the order of time in which they were made, all such bids or offers shall be on parity, except as noted in Rule 5.8(e).”

<sup>18</sup> PCX Rule 5.8(h) states: “All stop loss orders must clearly indicate in writing that they are such and, in addition, the amount and the price of the stock appearing at the top of the buy and sell ticket must be circled.”

<sup>19</sup> See PCX Rule 6.46 (“Responsibilities of Floor Brokers”).

<sup>20</sup> PCX Rule 5.12(a) states: “The seller shall be responsible for transactions being properly recorded by the floor reporters.”

<sup>21</sup> PCX Rule 5.13(a) states: “Every transaction on the Exchange must be compared as provided herein unless the same shall have been officially removed from the record in accordance with Exchange rules.” PCX Rule 5.13(b), Comparison Ticket, states

<sup>6</sup> See, e.g., PCX Rule 6.4(a) (“After a particular class of option \* \* \* has been opened for trading \* \* \*.”); PCX Rule 6.37(c) (“Whenever a Market Maker enters the trading crowd for a class of options in which he does not hold a Primary Appointment \* \* \*.”); PCX Rule 6.64, Com. .02 (“For those option classes and within such time periods as the Options Floor Trading Committee may designate \* \* \*.”).

<sup>7</sup> PCX Rule 6.1(a)(10) states that “[t]he term ‘class of options’ means all option contracts of the same type of option covering the same underlying stock” (emphasis added), while the term “type of option” is defined in PCX Rule 6.1(a)(7) to mean “the classification of an option contract as either a put or call (emphasis added).” Therefore, the term “class” may refer to either a put class or a call class of option contracts.

<sup>8</sup> PCX Rule 5.2(a) states: “All orders on the Exchange must either be ‘day,’ ‘immediate or cancel,’ ‘good ‘til canceled’ (‘GTC’), or ‘good ‘til canceled that are eligible for execution in the post—1:00 p.m. auction market trading and closing price protection sessions’ (‘GTX’). Each class of orders must be recorded on the proper ticket provided therefore.”

believes that PCX Options Rule 6.16 adequately covers the Exchange procedures for comparison of trade information and that the cross-reference to PCX Rules 5.13(a)–(b) is superfluous.

### C. Trading Floor Badges

The proposed rule change would eliminate provisions currently set forth in OFPA F–1 and F–6 relating to trading floor badges on the Options Floor that the Exchange believes are superfluous and unnecessary.<sup>22</sup> The proposal also would redesignate the remaining text of those as paragraphs (d)(1) and (d)(2) of PCX Rule 6.2.

### D. Visitors to the Options Floor

The proposal would redesignate OFPA F–2 as PCX Rule 6.2(e) (“Visitors on the Options Floor”). The proposal also would eliminate subsection 6 of OFPA F–2, which limits the number of visitors and lengths of time during which visitors are permitted on the Options Floor.<sup>23</sup> In addition, the proposal would make technical changes to OFPA F–2 and eliminate superfluous provisions, including a summary of the provisions of current PCX Rule 6.2(a).<sup>24</sup> Finally, the proposal would add a new provision to PCX Rule 6.2(e), stating that a group of visitors comprising more than fifteen persons may not enter the Trading Floor without prior approval of the Chair or Vice Chair of the Options Floor Trading Committee.

“The comparison ticket shall contain and constitute a record of the name, quantity and price of the securities traded and the names of the buying and selling members from which daily transaction sheets will be prepared for member firms.”

<sup>22</sup> The provisions being eliminated include the following:

“Rule 6.45 requires that each Floor Broker shall have in effect a Letter of Authorization that has been issued for such Floor Broker by a clearing member, and Section 77 of Rule VI requires that each Market Maker shall have in effect a Letter of Guarantee which has been issued for such market maker by a clearing firm.” (OFPA F–6)

<sup>23</sup> Subsection of OFPA F–2 currently provides: “The inviting member or member organization floor manager may not sign in more than four guests at any given time. Visitors may remain on the Options Trading Floor a maximum of two hours during the trading session and one-half hour after it. Visitors, except those referred to in paragraph #4 above, may not be allowed on the Options Trading Floor more than five times in a calendar month, regardless of the duration of each visit.”

<sup>24</sup> This part of OFPA F–2 states: “Rule 6.2(a) limits admission to the Floor to members, employees of the Exchange, clerks or messengers employed by members, and such other persons as may be provided for in the Rules. Pursuant to this Rule, the Exchange encourages the presence of appropriate visitors on the Options Trading Floor, but it is deemed necessary to strictly enforce certain procedures governing the admission to the Floor of such visitors.”

### E. Complaints From Floor Members

The proposal would eliminate OFPA E–5<sup>25</sup> and OFPA E–6<sup>26</sup> and replace it with new PCX Rule 6.2(f), which advises options floor members as to where they may direct complaints concerning situations arising on or relating to the Options Trading Floor. Specifically, the proposed rule would state that Floor Members may direct complaints concerning situations arising on or relating to the Options Trading Floor to the Options Surveillance Department or to the Enforcement Department so that appropriate follow-up action may be taken.

### F. Series of Options Open for Trading

The proposal would update PCX Rule 6.4(a)<sup>27</sup> so that it will conform with current Exchange practices by changing from three to four the number of different expiration months that will normally be opened at the commencement of trading a particular option issue.<sup>28</sup> The proposed rule

<sup>25</sup> OFPA E–5 states:

“A Member of the Options Floor with a complaint concerning a situation arising on or relating to the Floor, should: (1) Notify the Surveillance Department of the circumstances involved, and (2) subsequent to such notification, submit the complaint in writing to the Surveillance Director. If the concerned Member believes it necessary for the Surveillance Department to personally review or rectify the situation, a member of the Department will immediately come to the Floor. A study will be conducted on all matters referred to the Surveillance Department pursuant to this floor Procedure Advice. Upon completion of such study, the Member(s) filing the complaint will be informed of the conclusion (i.e., filed closed or referred to the Compliance Department for further review or action). A written report of each study will be submitted to the Options Floor Trading Committee. General Information regarding such study may be given to concerned Members; however, the specific details shall remain confidential.”

<sup>26</sup> OFPA E–6 states:

“Upon receipt of a written complaint from a member of the Options Floor, the Compliance Department shall commence an investigation into the allegations contained in such complaint. The Compliance Department may, among other things, interview the Complainant, and any witnesses and parties to the action which gave rise to the complaint. The Compliance Department may request a written response from the parties involved and any witnesses. Upon the Compliance Department obtaining the facts pertinent to the issue, a written recommendation will be drafted and presented to the Options Floor Trading Committee. After the Options Floor Trading Committee has received the written recommendation of the Compliance Department, the item should be placed on the Committee’s agenda for discussion, and final action, insofar as the Options Floor Trading Committee is concerned. The Compliance Department may, in addition, commence Disciplinary Proceedings based upon any violation of the Pacific Exchange Constitution, Rules, Commentaries or procedures uncovered during the investigation of the complaint.”

<sup>27</sup> The proposal would also fix a typographical error in PCX Rule 6.4(e).

<sup>28</sup> Cf. CBOE Rule 5.5, Interp. & Policy .03.

change also would remove provisions the Exchange believes are erroneous on the specific expiration month that may be added at the commencement of trading of a particular issue and at the time a previous month’s series expires. The rule currently states that three months will normally be opened, with the first expiration month being within approximately three months thereafter, the second month being approximately three months after the first and the third being approximately three months after the second. In addition, the rule states that additional series of the same class may be opened for trading on the Exchange at or about the time a prior series expires, and the expiration month of each such series shall normally be approximately nine months following the expiration of such series. However, the current industry practice is normally to add four expiration months, the first two being the two nearest months, and the third and fourth being the next two months of the quarterly cycle previously designated by the Exchange for that specific issue.<sup>29</sup> When a previous expiration month’s series expires, a new expiration month is added to assure that there are always four expiration months.

### G. Verification of Compared Trades

The proposal would reduce the amount of time during which members or their representatives are required to remain available on the trading floor after the Trade Processing Department closes. The reduction would be based on the number of transactions processed per trading day. Specifically, the proposed rule change would require that members or their representatives be available after Trade Processing closes for 30 to 60 minutes, depending on the number of transactions involved. Currently, members or their representatives are required by PCX Rule 6.17, Commentary .01 to remain available after the close as follows: when fewer than 8,000 transactions on the Exchange have occurred, 45 minutes; but when more than 8,000 trades have occurred, one hour and 15 minutes. Under the proposal, these times would be modified as follows: 0–8,000 transactions, 30 minutes; 8,000–12,000 transactions, 45 minutes; and over 12,000 transactions, 60 minutes. The Exchange believes that the new requirements are more reasonable and better reflect the Exchange’s needs.

### H. Resolution of Uncompared Trades

The proposal would modify PCX Rule 6.21 by changing the basis for establishing a loss as the result of an

<sup>29</sup> *Id.*

uncompared trade so that it will be the opening price on the business day following the trade date. Currently, the basis is the lesser of either the opening price on the business day following the trade date or the price at which the uncompared trade was closed. After careful consideration and review of this proposal by Exchange members and member firms, the Exchange proposes this change in an effort to simplify and make uniform the administration of pricing uncompared trades.<sup>30</sup> The proposal also would require that notice of uncompared trades must be provided no later than the scheduled commencement of trading (unless a floor official directs otherwise). The Exchange believes that the current time requirement—15 minutes from the scheduled commencement of trading—is overly flexible.

#### *I. Reports of Open Exercise Positions*

The proposal would clarify and simplify PCX Rule 6.27, which currently requires member organizations to file certain reports on open positions with the Exchange. The proposed rule change would include the last sentence of PCX Rule 6.27, the text of commentary .01 to that rule, and eliminate commentaries .01, .02 and .03.<sup>31</sup> As amended, PCX Rule 6.27 would provide that the Exchange may require each member organization to file with the Exchange a report, as of the 15th of each month, of all open positions resulting from the exercise of options contracts in accounts carried by a member organization. It would then incorporate current Commentary .01 into the rule by adding that such reports, when required, must be filed no later than the second business day following the day as of which the report is made.

#### *J. Fast Markets*

The proposal would change PCX Rule 6.28 by redesignating OFPA G-9 as paragraph (b) of PCX Rule 6.28. Currently, OFPA G-9 lists procedures that become effective in a fast market situation. The Exchange proposes this change to simplify and consolidate rules

relating to fast market and unusual market conditions. In addition, the proposal adds as paragraph (b)(5) a cross-reference to the current requirement that market makers have under Rule 6.37(f) to trade a minimum of one contract based on quoted markets during fast markets. The proposal would specify in new paragraph (b)(6) that regular trading procedures will be resumed when two floor officials determine that the conditions supporting the fast market no longer exist. Finally, it would remove, as unnecessary, the current provision allowing floor officials to assign brokerage responsibilities for particular series to specific floor brokers in the trading crowd during fast markets.

### **III. Discussion**

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, and in particular, with the requirements of Section 6(b).<sup>32</sup> The proposal would modify certain rules relating to options trading on the PCX by clarifying existing provisions, eliminating unnecessary provisions, and codifying current policies and procedures. By clarifying and updating its rules and obligations for market participants, the Commission believes the proposal is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and protect investors and the public interest.<sup>33</sup>

### **IV. Conclusion**

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>34</sup> that the proposed rule change (SR-PCX-99-36), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>35</sup>

**Margaret H. McFarland,**

*Deputy Secretary*

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<sup>32</sup> 15 U.S.C. 78f(b).

<sup>33</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>34</sup> 15 U.S.C. 78s(b)(2).

<sup>35</sup> 17 CFR 200.30-3(a)(12).

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43292; File No. SR-Phlx-00-74]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's Liability in Connection With the Administration of Its Proprietary Indices**

September 14, 2000.

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 August 4, 2000, 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 Exchange proposes to amend Phlx Rule 1102A, Limitation of Exchange Liability, to add to the limitation of the Exchange's liability, in connection with its administration of Phlx proprietary indexes, negligent acts or omissions. Below is the text of the proposed rule change. Additions are italicized; deletions are in brackets.

#### **Rule 1102A Limitation of Exchange Liability**

Neither the Exchange, the Reporting Authority nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the current index value or the closing index value resulting from any *negligent act or omission by the Exchange or any [an] act, condition or cause beyond the reasonable control of the Exchange, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; any error, omission or delay in the reports of transactions in one or more underlying securities; or any error, omission or delay in the reports of the current index value or the closing index value by the Exchange or the Reporting Authority.*

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

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

<sup>30</sup> Cf. CBOE Rule 6.61, Interp. & Policy .01.

<sup>31</sup> Commentary .02 provides: "An open exercise position shall include any position with respect to which the Options Clearing Corporation has assigned an exercise notice to the member organization and the member organization has not delivered the shares of the underlying stock in accordance with the Rules of the Options Clearing Corporation and these Rules." Commentary .03 provides: "All such reports shall be delivered to the Department of Member Organizations of the Exchange." The Exchange does not believe that a specific department needs to be identified in this rule and, in any event, member firms are currently on notice that such reports must be filed with the Department of Options Surveillance.