

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange 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, it has become effective pursuant to section 19(b)(3)(A) of the Act¹⁶ and rule 19b-4(f)(6) thereunder.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of 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 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 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-00-42 and should be submitted by February 6, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-1193 Filed 1-12-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43817; File No. SR-PCX-00-43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Supervisory Procedures for Pacific Exchange Equities, Inc.

January 8, 2001.

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 December 1, 2000, 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. On December 28, 2000, the Exchange filed an amendment to the proposed rule change.³ On January 5, 2001, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended, has become effective on filing pursuant to Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(6) thereunder.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁸ 17 CFR 200.30-2(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission (December 28, 2000) ("Amendment No. 1"). Amendment No. 1 corrected typographical errors that appeared in the proposed rule text.

⁴ See Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission (January 5, 2001) ("Amendment No. 2"). Amendment No. 2 further corrected typographical errors that appeared in the proposed rule text.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

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

The Exchange is proposing to adopt a Pacific Exchange Equities, Inc. ("PCXE") rule requiring all ETP Holders, Equity ASAP Holders and ETP Firms to adopt and implement a supervisory system and written supervisory procedures. Below is the text of the proposed rule change. Additions are *italicized*, and deletions are in brackets.

Supervision

* * * * *

Rule 6.17(a). Adherence to Law

No ETP Holder, Equity ASAP Holder or ETP Firms may engage in conduct in violation of the federal securities laws, the Constitution or the Rules of the Corporation. Every ETP Holder, Equity ASAP Holder or ETP Firm must supervise persons associated with it so as to assure compliance therewith.

(b). Supervisory System

Each ETP Holder, Equity ASAP Holder or ETP Firm for which the Corporation is the Designated Examining Authority ("DEA") must establish and maintain a system to supervise the activities of its associated persons and the operation of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and PCXE Rules. Final responsibility for proper supervision will rest with the ETP Holder, Equity ASAP Holder or ETP Firm. The ETP Holder's, Equity ASAP Holder's or ETP Firm's supervisory system must provide, at a minimum, for the following:

(1) The establishment and maintenance of written procedures as required by paragraph (c) of this Rule.

(2) The designation of a person with authority to reasonably discharge his/her duties and obligations in connection with supervision and control of the activities of the associated persons of the ETP Holder, Equity ASAP Holder or ETP Firm.

(3) The ETP Holder, Equity ASAP Holder or ETP Firm must undertake reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.

(4) Each ETP Holder, Equity ASAP Holder or ETP Firm must designate and specifically identify to the Corporation one or more persons who will be responsible for such supervision.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

(c). Written Procedures

Each ETP Holder, Equity ASAP Holder or ETP Firm must establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to achieve compliance with applicable federal securities laws and regulations, and with the PCXE Rules.

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

There are some PCX and PCXE rules that relate to supervision of firm activity for those PCX member firms and PCXE ETP Holders, Equity ASAP Holders and ETP Firms that conduct a public business. These include options rules such as, "Office Supervision,"⁷ "Account Supervision,"⁸ "Conduct on the Floor,"⁹ and equities rules such as, "Allied Persons & Approved Persons,"¹⁰ "Office Supervision,"¹¹ and "Account Supervision."¹² The Exchange, however, does not currently have a comprehensive rule that directly addresses the obligation of every member firm and ETP Holder, Equity ASAP Holder and ETP Firm, whether conducting a public business or a proprietary business, to properly supervise its business and employees. The proposed rule clarifies (1) the responsibility of the ETP Holders, Equity ASAP Holders and ETP Firms for the acts of its employees; and (2) the requirement that each ETP Holder, Equity ASAP Holder and ETP Firm

must supervise those persons for which it is responsible.

The proposed rule has three distinct parts. The first section of the proposed rule change is a prohibition on engaging in conduct that violates the federal securities laws, the Constitution or the Rules of the Exchange and the PCXE. This section also informs ETP Holders, Equity ASAP Holders and ETP Firms that they must supervise all associated persons in order to assure compliance.

Section two of the proposed rule change sets forth the responsibility of all ETP Holders, Equity ASAP Holders and ETP Firms to establish and maintain a system to supervise the activities of their employees. The proposed rule states that this system must be reasonably designed to achieve compliance with the federal securities laws and PCXE rules. The final responsibility for proper supervision rests with the ETP Holder, Equity ASAP Holder and ETP Firm. The supervisory system must, at a minimum, provide (1) the designation of a person responsible for carrying out the firm's supervisory obligations; (2) a requirement that the ETP Holder, Equity ASAP Holder and ETP Firm must undertake reasonable efforts to determine that all supervisory personnel are qualified, by virtue of experience and training, to carry out their obligations; and (3) a requirement that the ETP Holder, Equity ASAP Holder and ETP Firm must identify to the PCXE the person(s) who will be responsible for such supervision.

Section three of the proposed rule change states that each ETP Holder, Equity ASAP Holder and ETP Firm must establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its employees. These procedures must be reasonably designed to achieve compliance with the federal securities laws and the PCXE rules.

The Commission approved a similar rule filing by the National Association of Securities Dealers, Inc.¹³ The Exchange believes that the proposed rule change will serve to significantly strengthen the ability of the Exchange to carry out its oversight responsibilities as a self-regulatory organization. The proposed rule change should also aid the Exchange in carrying out its examination, compliance, and surveillance functions. Finally, the proposed rule change clarifies ETP Holder's, Equity ASAP Holder's and ETP Firm's supervisory obligations.

¹³ See National Association of Securities Dealers, Rule 3010.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest by setting forth member supervisory obligations.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of 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 proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

⁷ PCX Rule 9.1.

⁸ PCX Rule 9.2(b).

⁹ PCX Rule 6.2(b).

¹⁰ PCXE Rule 2.14(d).

¹¹ PCXE Rule 9.1(c).

¹² PCXE Rule 9.1(d).

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-00-43 and should be submitted by February 6, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-1194 Filed 1-12-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43812; File No. SR-Phlx-99-50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending the Exchange's Certificate of Incorporation

January 5, 2001.

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 November 23, 1999, 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 Exchange. The Phlx filed an amendment to the proposal on December 28, 2000.³ 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

a. The Original Filing

The Phlx proposes to amend its Certificate of Incorporation to add Article Nineteenth, relating to the leasing of memberships.⁴ A complete copy of the text of Article Nineteenth is available at the Office of the Secretary, the Phlx, and at the Commission.

Proposed Article Nineteenth provides that, in addition to all other powers granted to the Board by law, the Certificate of Incorporation or otherwise, the Board shall have the power to determine whether, and under what terms and conditions, memberships may be leased, and to adopt by resolution or to set forth in the Rules of the Board such rules with respect to lease agreements, lessors and lessees as the Board may from time to time determine to be advisable. Such rules may include rules regulating and setting forth the rights and obligations of lessors and lessees, the required terms of lease agreements, and the fees, dues, and other charges required to be paid by lessors and lessees (or either of them) to the Exchange in connection with, and for the privilege of, leasing memberships. In addition, proposed Article Nineteenth provides that the Board shall have the power to adopt rules relating to the suspension or termination of any or all lease agreements with respect to memberships, to issue provisional trading privileges on such terms as the Board shall determine to members whose lease agreements are suspended or terminated, and to amend, alter, or repeal any or all of the Rules of the Board with respect to any of the foregoing matters.

⁴ In connection with this proposed rule change, the Commission approved a proposed rule change that adopted Article Twentieth. *See* Securities Exchange Act Release No. 42317 (January 5, 2000), 65 FR 2215 (January 13, 2000) (SR-Phlx-99-48). Article Twentieth provides, in part, that the Exchange's Board of Governors ("Board") shall have the power to assess such fees, dues, and other charges upon members, lessors and lessees of memberships and holders of permits (or any of them) as the Board may from time to time adopt by resolution or set forth in the Rules of the Board. On May 11, 2000 the Commission approved a proposed rule change, which amended Article Twentieth to include the words "owner" and "member organization" and to define the word "owner" to clarify the original intent of Article Twentieth. *See* Securities Exchange Act Release No. 42773 (May 11, 2000), 65 FR 31622 (May 18, 2000) (SR-Phlx-00-30).

b. Amendment No. 1

As a non-stock corporation organized under the Delaware General Corporation Law ("DGCL"), the Exchange represents that it has ample authority to adopt proposed Article Nineteenth. Because the Exchange's Certificate of Incorporation does not require member approval to adopt a charter amendment, proposed Article Nineteenth may be adopted by the Board of Governors without approval by the members of the Exchange (including lessees of memberships) or the owners of memberships (including lessors of memberships). 8 *Del. C.* § 242(b)(93).⁵ Therefore, the Exchange's Board adopted Article Nineteenth in accordance with Section 242.

Furthermore, Section 141(j) of the DGCL empowers the Board to direct the business and affairs of the Exchange, and the Exchange's by-laws give the Board broad power to adopt rules of the Exchange. 8 *Del. C.* § 141(j);⁶ By-Law Art. IV, § 4-4. In addition, existing Article Third of the Phlx Certificate of Incorporation gives the Exchange authority to do all things necessary to run a national securities exchange.⁷ Numerous provisions of the Exchange's by-laws and rules already address matters similar to those addressed by proposed Article Nineteenth.⁸ Therefore, the adoption of Article Nineteenth falls within the broad authority expressly conferred by Delaware law and existing provisions under the Phlx Certificate of Incorporation.

⁵ Section 242 of the DGCL permits the board of a non-stock corporation to adopt amendments to the corporation's Certificate of Incorporation.

⁶ *See also* 8 *Del. C.* § 121(a) (providing that in addition to powers expressly granted by law or the Certificate of Incorporation, the corporation and its directors may exercise "any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation").

⁷ Article Third states, in part, that the Exchange may operate as and perform all functions of a national securities exchange and engage in any lawful act or activity for which corporations may be organized under the DGCL.

⁸ *See, e.g.,* By-Law Art. XV, § 15-1(a) (providing that a membership may be leased in accordance with such rules as the Board may adopt); Rule 930 (setting forth required terms of lease agreement and providing, among other things, that the Exchange may dispose of a membership subject to a lease agreement); Rule 960.1 (providing that all members, member organizations and any persons associated with any member are subject to expulsion, suspension, termination as to activities at the Exchange or any other fitting sanction for violation of the Rules of the Exchange); *see also* Certificate of Incorporation, Article 20th (giving Board plenary authority to assess fees, dues and other charges and to impose penalties, including cancellation of a membership and forfeiture of all rights as a lessor or lessee, for nonpayment).

¹⁸ CFR 200.30-2(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ *See* Letter from Cynthia Hoekstra, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 27, 2000 ("Amendment No. 1"). In Amendment No. 1, the Phlx represented that the Phlx's Board has the authority to adopt Article Nineteen pursuant to Delaware corporate law, Pennsylvania contract law, and the Exchange's Certificate of Incorporation, by-laws, and rules.