

revenue sharing, allowing PAMMs to share in the transaction fee paid by other participants when such participants execute against an order submitted to auction by a PAMM.

Nasdaq will impose monthly fees to access the System. These fees vary based on the method chosen by the Participant to access the System. The System will operate on a network that is independent from Nasdaq's other existing systems (e.g., SuperSoesSM). Primex Participants will be charged a monthly fee for this independent network. In addition, Participants will be charged for each visit by Nasdaq staff to install, or uninstall, software or hardware necessary to access the System.

In addition to monthly charges, Nasdaq will impose fees based on orders executed through the System. As set forth in the schedule of fees, no fee is charged for submitting an order to auction, and in general no fee is charged to have such orders executed.⁷ Execution fees are only charged against Participants that extract liquidity by responding to, and executing against, orders submitted for auction. This execution fee is a penny per share with a maximum charge of \$5.00 per execution. Accordingly, the fee would be charged to a Participant for any execution resulting from that Participant's Indication or real-time Response that interacted with an order put to auction.

In addition, and as discussed above, PAMMs have the option of attaching certain matching rights on orders they submit to the System. Nasdaq will impose a fee when a PAMM utilizes the Two-Cent Match feature and retains an order for execution. In such circumstances, the PAMM will be charged \$.0025 per share, with a \$2.50 maximum per retained order. If the PAMM does not retain the order because the order is executed against the Crowd Participant(s) who has offered more than two cents of price improvement, there is no charge to the PAMM. Instead, Nasdaq will share with the PAMM one-third of the transaction fee collected for such transaction. Nasdaq has decided to share the transaction fee in these circumstances to

against any interest by the Crowd that satisfies the order during its exposure at the price(s) and size of such Crowd interest, for no more than 50% of the order. Any execution with the Crowd will immediately cause the System to provide the order with an additional execution of like size and price against the PAMM that entered the order.

⁷ The one exception is where an order submitted to auction directly meets and interacts with another order submitted to auction, in which case the second order is treated as a Response, and is charged a fee accordingly.

encourage PAMMs to submit orders for auction in the System. The revenue sharing amounts will be paid on a quarterly basis.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act⁸ in that the proposed fees provide for the equitable allocation of reasonable fees among members. The fees apply equally to all Participants in the System, based upon the category the member has chosen to participate in the System. All members in the same category of Participant (e.g., PAMM) are subject to the same fees.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(2) of Rule 19b-4 thereunder¹⁰ in that it establishes the fee schedule for the use of a Nasdaq system.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 NASD. All submissions should refer to the file number SR-NASD-2001-93 and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45301; File No. SR-PCX-2001-45]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Inactive Lessors' Eligibility To Serve on the Board of Governors

January 17, 2002

On December 7, 2001, 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 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Article III, Section 2(b) of the PCX Constitution and PCX Rule 1.1(h) to provide for the eligibility of inactive lessors to serve on the PCX Board of Governors ("Board").

The proposed rule change was published for comment in the **Federal Register** on December 17, 2001.³ The Commission notes that the proposed rule change was noticed for a 15-day comment period, and the Commission received no comments regarding the proposed rule change.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 45144 (December 10, 2001), 66 FR 65015.

⁸ 15 U.S.C. 78k-1(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ Specifically, the Commission finds that the proposal to clearly establish that PXC inactive lessors are eligible to serve on the PCX Board is consistent with Section 6(b)(5) of the Act,⁵ because it is designed to promote just and equitable principals of trade and to protect investors and the public interest. Inactive lessors have a financial interest in the activities of the Board and the Exchange due to their ownership of an Exchange membership. The Commission finds that allowing inactive lessors to serve on the Board is a fair and reasonable practice to provide inactive lessors and their interests to be represented on the Board.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-PCX-2001-45) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02-1741 Filed 1-23-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45295; File No. SR-Phlx-2002-03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend a PACE Order Execution and Price Protection Pilot Program

January 16, 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 January 8, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed this proposal under section 19(b)(3)(A) of the Act,³ and Rule

19b-4(f)(6)⁴ thereunder, which renders the proposal effective upon filing with the Commission. 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 extend through April 15, 2002 its PACE (Philadelphia Stock Exchange Automated Communication and Execution System)⁵ order execution and price protection pilot program ("pilot"). The pilot, which is found in Supplementary Material .05 and .07(c)(ii) to Phlx Rule 229, incorporates decimal pricing into two PACE provisions—immediate execution of certain market orders through the Public Order Exposure System ("POES") and mandatory double-up/double-down price protection for equities trading in decimals. The pilot has been in effect since August 25, 2000.⁶ The only substantive change proposed in this filing is to extend the date of effectiveness of the pilot through April 15, 2002. The text of the proposed rule change is available at the Phlx and at the Commission.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to extend the pilot through April 15, 2002. No other substantive changes are proposed at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act⁷ in general, and in particular, with section 6(b)(5),⁸ 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, and, in general, protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 neither solicited nor received.

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, it has become effective pursuant to section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ 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.

The Exchange has requested that the Commission waive the 5-day pre-filing

⁴ 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).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

⁸ 15 U.S.C. 78s(b)(1).

⁹ 17 CFR 240.19b-4.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6). The Phlx requested that the Commission waive the 5-day pre-filing notice requirement, and the 30-day operative delay.

⁵ PACE is the Phlx's automated order routing, delivery, execution and reporting system for equities.

⁶ The pilot was established in SR-Phlx-00-08. See Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000). The pilot has been extended several times, most recently through January 14, 2002. See Securities Exchange Act Release Nos. 44185 (April 16, 2001), 66 FR 20511 (April 23, 2001) (SR-Phlx-2001-20); 44818 (September 19, 2001), 66 FR 49240 (September 26, 2001) (SR-Phlx-2001-81); and 45079 (November 19, 2001), 66 FR 59292 (November 27, 2001) (SR-Phlx-2001-102). The price improvement portion of the pilot program (Supplementary Material .07(c)(i) to Rule 229) has been replaced by a price improvement pilot program with an automatic price improvement feature based on decimal trading, including a percentage of the spread between the bid and the offer. See Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001) (SR-Phlx-2001-12).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).