

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 not solicited. However, NASD Regulation received a letter from the National Association for Variable Annuities ("NAVA"), which argues that the non-cash compensation rules do not apply to sales of group variable annuities for several reasons.<sup>14</sup> First, NAVA contends that the specific language of NASD Rule 2820 limits its application to activities of members in connection with variable contracts, to the extent such activities are subject to regulation under the federal securities laws.<sup>15</sup> However, although certain provisions of the federal securities laws do not apply to exempted securities, other provisions of the federal securities laws do apply, including the anti-fraud provisions. Therefore, NASD Rule 2820(a) does not restrict the application of NASD Rule 2820(g) to group variable activities.

Second, NAVA argues that because NASD Rule 2820(g) was not specifically included in the 1996 Order's list of NASD rules applicable to exempted securities, the non-cash compensation provisions do not apply to sales of group variables. As described above, NASD Rule 2820(g) had not been adopted at the time the NASD identified the NASD rules that would apply to exempted securities, other than municipal securities. Accordingly, NASD Rule 2820(g) was not listed as one of the provisions applicable to exempted securities.

Third, NAVA argues that if the non-cash compensation rules do apply to group variables, separate contests should be permissible for group variable products given their different design, cost structures and commission payouts. With respect to the allowance of separate contests for group variable products, NASD Regulation staff has stated in Question #22 of Notice to Member 99-55 (July 1999) that a member may structure a non-cash arrangement that is limited only to a specific division of the firm. Therefore, if a separate sales force or division sells group variable contracts, as the NAVA

letter indicates often occurs, then a separate contest may be appropriate. However, where the same salesperson sells both group variable products and individual variable annuities, separate contests would not be permissible, *i.e.*, the contest must be based on the entire universe of products within a specific product category that the individual sells.

**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 Exchange 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 change and Amendment No. 1 are 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-00-38 and should be submitted by October 19, 2000.<sup>16</sup>

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

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

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

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43342; File No. SR-PCX-00-08]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Stock Exchange, Inc. Relating to the Dissolution of the Appointments Committee**

September 26, 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 March 20, 2000, the Pacific Stock Exchange, Inc. ("PCX" or the "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. On September 21, 2000, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> 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 has filed with the Commission a proposed rule change to dissolve the Options Appointments Committee and to transfer all powers of the Options Appointments Committee to the Options Allocation Committee. The text of the proposed rule change is available at the Office of the Secretary, the PCX 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 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 IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<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 made technical corrections to the rule language and made non-substantive changes to the purpose section of the filing for clarity. See letter from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX to Jennifer L. Colihan, Division of Market Regulation, Commission, dated September 20, 2000.

<sup>14</sup> See letter from Mark J. Mackey, President and Chief Executive Officer, NAVA, to John M. Ramsay, Vice President and Deputy General Counsel, Office of General Counsel, NASD Regulation, dated April 16, 1999.

<sup>15</sup> NASD Rule 2820(a) states "[t]his Rule shall apply exclusively (and in lieu of Rule 2830) to the activities of members in connection with variable contracts, to the extent such activities are subject to regulation under the federal securities laws."

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

1. Purpose

Current PCX rules state that the duty of the Options Appointment Committee is to recommend to the Board of Governors the appointment, assignment, retention, reassignment, transfer, and taking leave of the privileges to deal in and trade options to, by, and among members on the Options Trading Floor.<sup>4</sup> The Options Appointment Committee is also responsible for appointing Market Makers and appointing and approving Lead Market Makers ("LMMs").<sup>5</sup> The Options Appointment Committee may relieve LMMs of their appointments, designate interim LMMs, and make determinations pertaining to LMM-related issues not within the jurisdiction of any other standing committee. The Exchange proposes to eliminate the Options Appointment Committee and to transfer all of its authority and duties to the Options Allocation Committee, in order to centralize the PCX rules relating to the approval, evaluation, allocation to, and appointment of LMMs.

Specifically, the Exchange proposes to change all references to the "Options Appointment Committee" in PCX Rule 11.10(a), to the "Options Allocation Committee" and to transfer the language of PCX Rule 11.10(a), relating to the current duties of the Options Appointment Committee, to the Options Allocation Committee under new proposed PCX Rule 11.10(b)(2). The Exchange also proposes to renumber PCX Rule 11.10(b) as 11.10(a) and PCX Rule 11.10(c) as 11.10(b)(1). The Exchange believes that these changes will make the application of the transfer of all authority and duties from the Options Appointment Committee to the Options Allocation Committee consistent throughout the text of PCX Rule 11.

The Exchange also proposes to change the references to the "Options Appointment Committee" in PCX Rules 6.35; 6.37; Commentary .08; 6.82(a)(1) and (3); 6.82(b)(1) and (2); 6.82(f)(3); 6.82(g)(1); and 6.82(h)(1) to the "Options Allocation Committee." The Exchange believes that these changes will make all rules referencing or relating to the Options Appointment Committee consistent with that committee's elimination and the delegation of its duties and powers to the Options Allocation Committee.

2. Statutory Purpose

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,<sup>6</sup> in general, and further the objectives of Section 6(b)(5),<sup>7</sup> in particular, in that they are designed to promote just and equitable principles of trade, to enhance competition and to 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 burden on competition 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*

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

**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 Amex consents, the Commission will:

- A. by order approve the 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 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, N.W., Washington, D.C. 20549-0609. Copies of the submissions, 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 persons, 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 at 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-00-08 and should be submitted by October 25, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43343; File No. SR-Phlx-00-80]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Waive Transaction and Comparison Fees on Customer Equity Option Orders.**

September 26, 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 September 1, 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 Phlx proposes to amend its schedule of dues, fees and charges to waive all comparison and transaction charges for customers trading equity options. The proposed fee is effective on September 1, 2000.

The text of the proposed rule change is available at the Phlx and the Commission.

<sup>8</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>4</sup> See PCX Rules 6.35, 6.37, 6.82, 11.10(c).

<sup>5</sup> See PCX Rules 6.35 and 6.82.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).