the extent such concerns had merit, the Commission believes the Amex's development of Auto-Ex functionality for Nasdaq securities should help address the concerns raised by other market participants.

For the reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[15] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Amex–2003–16) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–10791 Filed 4–30–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47734; File No. SR–PCX–2003–13]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to its Arbitration Program

April 24, 2003.

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 April 11, 2003, 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. The Commission has received two comment letters regarding the proposed rule change.[3] On April 17, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

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

PCX is proposing to amend its arbitration rules by amending Commentary .02 to PCX Rule 12.1 and adding new PCX Rule 12.35(b). PCX Rule 12.35(b) would require that pending arbitrations filed prior to the date the SEC approves the proposed rule changes set forth herein (the ''Approval Date'') be administered in accordance with PCX Rules 12.1 through 12.34 if an arbitrator has been appointed prior to the Approval Date and all parties to the arbitration have waived application of the California Rules of Court, Division VI of the Appendix, entitled ''Ethics Standards of Neutral Arbitrations in Contractual Arbitration'' (the ''California Standards''), and waived any claims against the PCX that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 (''CCCP Claims'').[5] Both waivers must be made without condition and in the form required by PCX. A copy of the proposed waiver form for the CCCP Claims was filed with the Commission as Exhibit A to the proposed rule change. The waiver for the California Standards must be made pursuant to the rules previously approved by the Commission.[6] Additionally, this rule change will require industry parties in arbitration to waive the CCCP Claims upon the execution of a waiver by a customer or, in industry cases, upon the execution of a waiver by an associated person with claims of statutory discrimination.

Below is the text of the proposed rule change. Proposed new language is *italicized*, deleted text is in [brackets].

* * * * *

PCX RULE 12

Arbitration

Matters Subject to Arbitration

Rule 12.1(a)–(g)—No change.

Commentary:

.01 No change.

.02 It may be deemed conduct inconsistent with just and equitable principles of trade for a member, a member organization or a person associated with a member or member organization to:

(a) fail to submit to arbitration on demand under the provisions of this Rule[,]*;*

(b) fail to waive the California Rules of Court, Division VI of the Appendix, entitled ''Ethics Standards for Neutral Arbitrators in Contractual Arbitration'' (the ''California Standards''), if all the parties in the case who are customers have waived application of the California Standards in that case; or to fail to waive the California Standards if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived application of the California Standards in that case;

(c) fail to waive any claims against the Exchange that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 (''CCCP Claims''), if all the parties in the case who are customers have waived the CCCP Claims in that case; or to fail to waive the CCCP Claims if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived the CCCP Claims in that case;[or]

(d) to fail to appear or to provide any document in his or its possession or control as directed pursuant to the provisions of this Rule; or

(e) to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Rule where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

.03 No change.

* * * * *

Rule 12.35 Applicability of Arbitration Rules

(a) Reserved.

(b) Arbitrations Filed Prior to [insert Approval Date]. Arbitration claims that were filed prior to [insert Approval Date] and remain pending will be administered as follows:

(i) The arbitration claim will be administered in accordance with Rules 12.1 through 12.34 if:

(A) arbitrator(s) have been appointed as of [insert Approval Date]; and

(B) all parties to the arbitration have waived, without condition and in the form required by the Exchange, the application of the California Standards and the CCCP Claims (as defined in Commentary .02 of Rule 12.1).]

* * * * *

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[15] 15 U.S.C. 78s(b)(2).

[16] *Id.*

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* e-mails dated April 14 and 18, 2003 from Tim Canning, Esq.

[4] *See* letter dated April 17, 2003 from Kathryn Beck, Senior Vice President, PCX, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission.

[5] The Exchange has filed a separate proposal (SR–PCX–2002–77) to address the administration of all other arbitrations.

[6] *See* Securities Exchange Act Release No. 46881 (Nov. 21, 2002), 67 FR 71224 (November 29, 2002).

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.[7] The text of these statements may be examined at the places specified in Item III below. PCX 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

PCX states that it makes every effort to serve investors who bring their claims to PCX by providing a fair, efficient, and economical arbitration forum. Recent changes in California law and the attendant litigation, however, have caused PCX to reevaluate the continuance of its arbitration program. Specifically, California recently adopted (1) Section 1281.92 of the California Code of Civil Procedure (''CCCP 1281.92''), which prohibits private arbitration providers from administering arbitrations, or providing any other services related to arbitration, if any party or attorney for a party has, or has had within the preceding year, any type of financial interest in the arbitration provider, and (2) the California Standards, which require arbitration providers to implement and maintain substantial new recordkeeping and disclosure requirements. CCCP 1281.92 became effective on January 1, 2003. Since their adoption, CCCP 1281.92 and the California Standards have become the subject of controversy or, in some cases, litigation regarding their interpretation and application to arbitration programs administered by self-regulatory organizations.[8] To minimize any potential financial and litigation risk associated with these new provisions, PCX has decided to implement certain changes to its arbitration rules. In this regard, PCX has developed a plan for the future handling of pending arbitration claims as well as any new arbitration claims raised under PCX rules.

As one part of this plan, the PCX intends to expeditiously proceed with the administration of pending arbitrations in which arbitrators have been appointed as of the Approval Date. Because PCX has a strong desire to accommodate the parties to these arbitrations, these matters will be permitted to continue under the existing PCX arbitration rules. However, given the uncertain legal environment in California, PCX would require the parties to these arbitrations to waive the California Standards and CCCP Claims in order for the arbitrations to continue pursuant to PCX Rules 12.1–12.34.[9]

Once this proposed rule filing is effective, PCX will notify parties to this subset of pending arbitrations of the rule change and provide them with the option of waiving the California Standards and the CCCP Claims. PCX will provide them with the waiver forms and the opportunity to speak with PCX staff if they desire more information regarding this option.

At the same time, PCX will notify industry parties in this same subset of cases that they must waive the California Standards and the CCCP Claims if the investor, or the associated person with a claim of statutory employment discrimination, agrees to a waiver. Industry parties in such cases will be required to execute waiver agreements. An industry party's failure to sign the waiver as required by the proposed rule change will be referred for disciplinary action.

2. Statutory Basis

PCX believes that this proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

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

PCX does not believe that the proposed rule change will impose 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 on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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–2003–13 and should be submitted by May 22, 2003.

IV. Summary of Comments

As noted above, this proposal is one of two filed by PCX relating to the administration of its arbitration program. The Commission received two letters from one commenter addressing the proposals.[12] The commenter, an attorney representing clients with pending arbitration claims at the Exchange, opposed accelerated approval of the proposals, and requested that they be subject to a full comment period. The commenter further expressed the concern that if any party to an arbitration proceeding did not execute the waivers required by PCX, the matter

[7] The discussion in this section represents the Exchange's views on the situation in California and does not in any way represent a Commission position on this issue.

[8] *See, e.g.*, Brief of the Securities and Exchange Commission, Amicus Curiae, in Support of Plaintiffs' Motion for Declaratory Judgment, NASD Dispute Resolution, Inc. and *New York Stock Exchange, Inc.*, v. *Judicial Council of California* (arguing that the California Standards conflict with, and thus are preempted by, the Commission's regulation of SRO arbitration under the Exchange Act and by the Federal Arbitration Act). The brief is available on the Commission Web site at: *www.sec.gov/litigation/briefs/nasddispute.pdf. See also* Securities Exchange Act Release No. 46881 (Nov. 21, 2002) (describing the controversy regarding new California arbitration provisions).

[9] PCX will defer action on those pending arbitrations in which the parties did not sign waivers as set forth in Rule 12.35(b)(i)(B). Another PCX rule filing, SR–PCX–2002–77, will address how such arbitrations will be administered, if and when the rule filing is approved by the SEC.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* n. 3, *supra*.

could be dismissed, exposing the claimant to additional costs, loss of fees, time and effort, and the risk of a lapsed statute of limitations.[13] The commenter further expressed concern that such waivers might be vulnerable to a legal challenge, thereby impairing the finality of any award. The commenter asserted that the PCX faced little or no harm if it continued its arbitration program.

In response, the PCX noted that SR–PCX–2003–13 applies only to cases where arbitrators have been appointed.[14] The PCX stated that none of the commenter's pending cases had arbitrators appointed, and that thus, approval of this proposal would not affect them. The PCX asserted that approval of this proposed rule change would permit other arbitrations to move forward in an expeditious manner. Finally, as noted above,[15] PCX has stated that it will defer action on arbitrations where the parties do not sign waivers, but will address their administration in the companion rule filing, SR–PCX–2002–77, subject to approval by the SEC.

V. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, 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, the requirements of Section 6 of the Act.[16] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[17] The Commission believes that the proposed rules are designed to provide investors with a mechanism to help resolve their disputes with broker-dealers in an expeditious manner, and are designed to help ensure the certainty and finality of arbitration awards.

The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that this proposal would apply only to a defined set of arbitrations currently pending at the PCX—those where arbitrators have been appointed. Accelerated approval is appropriate in that it will allow these cases to move forward in an expeditious manner. The Commission further notes that PCX will defer action on any case where a party refuses to execute the required waivers, and that the administration of such cases will be addressed in another PCX rule filing, as stated above.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–PCX–2003–13) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–10788 Filed 4–30–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47738; File No. SR–Phlx–2001–28]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Who Allocates Options Trades

April 25, 2003.

On March 9, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'') 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 relating to who allocates options trades.

On January 31, 2002, May 17, 2002, July 8, 2002, and March 12, 2003, Phlx submitted Amendment Nos. 1, 2, 3, and 4 to the proposed rule change, respectively.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 25, 2003.[4] The Commission received no comments on the proposal.

The proposal would amend the Exchange's Option Floor Procedure Advice F–2 (''Advice F–2''), governing who is responsible for allocating, matching, and time stamping an options trade in specific situations, and for reporting the trade upon its execution. The proposal would also codify paragraph (a) of Advice F–2, as amended, in the Exchange's rules as new paragraph (vi) of Phlx Rule 1014(g).

The proposal specifies that, in trades involving a floor broker, the floor broker would be assigned the responsibility for allocating, matching, time stamping, and reporting, but provides that the floor broker would be permitted to delegate this responsibility to the specialist or an assistant under the specialist's supervision. The proposed rule change would also specify that, in all other cases where the specialist is a participant, the specialist or an assistant under the specialist's supervision would be required to allocate the trade. The responsibility for allocating trades in which neither the floor broker nor the specialist is a participant would remain the same under the proposed rule change. The proposal would also increase the fines for violation of the Exchange's rules on allocation and reporting of trades.

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[5] and, in particular, the requirements of Section 6 of the Act[6] and the rules and regulations thereunder. The Commission believes

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[13] The commenter noted that although an arbitration generally tolls the statute of limitations, this does not apply when an arbitration is dismissed.

[14] *See* letters dated April 17 and 23, 2003 from Kathryn Beck, Senior Vice President, PCX, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission.

[15] *See* n. 9, *supra*.

[16] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 30, 2002 (''Amendment No. 1''); and letters from Richard S. Rudolph, Director and Counsel, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 16, 2002, July 5, 2002, and March 12, 2003 (''Amendment Nos. 2, 3, and 4'').

The proposed rule change was submitted by Phlx pursuant to subparagraph IV.B.j. of the Commission's Order of September 11, 2000, which requires the Exchange (among other respondent options exchanges) to adopt new, or amend existing, rules to make express any practice or procedure ''whereby Market-Makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class, or the allocation of orders in that option class.'' Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

[4] See Securities Exchange Act Release No. 47500 (March 13, 2003), 68 FR 14456.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.