

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44479; File No. SR-PCX-00-47]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Pacific Exchange, Inc. Adopting Formal Procedures for Members To Submit Proposals To List Option Classes on the Exchange

June 27, 2001.

I. Introduction

On December 13, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to 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 adopting formal procedures for members to submit proposals to list options classes on the Exchange. The PCX submitted Amendment Nos. 1³ and 2⁴ to the proposed rule change on February 13, 2001 and March 14, 2001, respectively. The **Federal Register** published the proposed rule change for comment on April 13, 2001.⁵ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

II. Description of Proposal

The PCX proposes to adopt new PCX Rule 3.8 to provide procedures for member organizations to propose the listing of options on the Exchange.⁶ The Exchange would provide a written

response, setting forth the basis for the denial or placement of limitations or conditions, to the requesting member organization within ten business days of the date of the request. The proposed rule change also sets forth the qualitative and quantitative procedures that the Exchange's Options Listings Committee would follow in making a listing determination.

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.⁷ Specifically, the Commission believes that the proposed rule change is consistent with the section 6(b)(5)⁸ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will remove impediments to and perfect the mechanisms of a free and open market by providing formal procedures for members to request the listing of options on the Exchange. The proposal would require the Exchange to respond in writing within ten business days to requests by members to list options. The Commission believes that the proposed procedures and time frames set forth in the proposed rule change are reasonable and adequately balance the Exchange's need to thoroughly examine proposed listings before making its determination with its members' need for a prompt and specific response to its listing recommendation.

In addition, the proposed rule change codifies the factors to be considered by the Exchange in determining whether to list a recommended option. The Commission believes that the proposed factors represent legitimate issues that the Exchange may consider when making a listing decision. The Commission notes that if the Exchange denies or places conditions or limitations upon a proposed listing, it must include its reasons in the letter notifying the member of its decision. The Commission believes that this requirement should help to ensure that the Exchange relies only upon the

factors codified in its rules when making a listing decision.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change, as amended (SR-PCX-00-47), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44480; File No. SR-Phlx-2001-02]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Codifying Formal Procedures for Members To Submit Proposals To List Option Classes on the Exchange

June 27, 2001.

I. Introduction

On January 11, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to 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 codifying formal procedures for members to submit proposals to list option classes on the Exchange. The Phlx filed Amendment Nos. 1³ and 2⁴ to the proposed rule change on February

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On February 13, 2001, the PCX submitted a new Form 19b-4, which replaces and supersedes the original filing in its entirety ("Amendment No. 1").

⁴ See letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 13, 2001 ("Amendment No. 2"). Amendment No. 2 revises proposed PCX Rule 3.8(c) to require the Exchange to provide a written response within ten business days to the requesting member specifying that a denial or placement of limitations or conditions is due to other bona fide business considerations that are specifically documented and maintained in the minutes of the Exchange's Options Listings Committee.

⁵ Securities Exchange Act Release No. 44149 (April 4, 2001), 66 FR 19273.

⁶ As part of a settlement of an enforcement action by the Commission, four of the options exchanges, including the PCX, are required to adopt rules to codify listing procedures to be carried out when a member or member organization requests the exchange to list options not currently trading on the exchange. See 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).

⁷ In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 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 Richard Rudolph, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 20, 2001 ("Amendment No. 1"). Among other things, Amendment No. 1 clarifies that the Exchange: (i) May consider bona fide business interests in determining whether to list an option; (ii) must send letters to members setting forth in reasonable detail the basis on which a decision not to list a proposed option was made; and (iii) must forward its written response within three business days of its determination to deny a proposed listing.

⁴ See letter from Richard Rudolph, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated May 1, 2001 ("Amendment No. 2"). Amendment No. 2 clarifies that the Exchange must notify the member in writing if the Exchange determines not to list, or to place conditions or limitations upon, a proposed listing. Amendment No. 2 also clarifies that the Exchange must maintain a record of any bona fide business interests supporting a decision not to list, or to place conditions or limitations upon, a proposed listing.