and (C) below, of the most significant aspects of these statements.[2]

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

The immediate purpose of the proposed rule change amends article I, VI and XII of OCC's by-laws and chapters VI and XVIII of its rules to accommodate the introduction of options on ''iShares.'' iShares represent interests in an investment company holding portfolios of government securities, corporate debt securities, or government and corporate debt securities. OCC currently issues and clears options on interests in various entities holding portfolios of equity securities (including iShares' equity-based funds). OCC's Rules define such options and their underlying interests as ''stock fund options'' and ''stock fund shares,'' respectively. To accommodate options on iShares representing interests in an entity holding portfolios of debt securities and to accommodate the possibility that exchanges may in the future list options on interests in other entities holding non-equity securities (or a combination of equity and non-equity), the proposed rule change will replace the terms ''stock fund options'' and ''stock fund shares'' with the terms ''fund options'' and ''fund shares'' and will eliminate any reference to ''stock'' or ''equity'' within the definitions.[3]

OCC will interpret the term ''fund shares'' broadly, as it did the term ''stock fund shares,'' to include not only interests in registered investment companies but also interests in unregistered trusts (*e.g.*, HOLDRs) and in other investment vehicles holding portfolios of securities. Accordingly, to reflect this broad interpretation the proposed rule change will substitute the term ''trusts'' for ''unit investment trusts'' in the definition of ''fund share.'' Conforming changes will be made throughout OCC's By-laws and Rules to incorporate the new definitions.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act,[4] as amended, and the rules and regulations thereunder applicable to OCC because it promotes the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protects investors and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change will have any impact, or impose any 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 not and are not intended to be solicited with respect to the proposed rule change and none have been received.

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

Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder, requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[5] The Commission finds that the proposed rule change is consistent with this obligation because by allowing OCC to clear and settle options on nonequity fund shares, market participants trading these products will obtain the efficiencies and safeguards provided by OCC, a registered clearing agency.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. Both the American Stock Exchange (''Amex'') and the Chicago Board Options Exchange (''CBOE'') have informed OCC that they intend to begin trading options on iShares debt-based funds upon the Commission's approval of this proposed rule change and of a related supplement to the Options Disclosure Document. Accordingly, the Commission finds that there is good cause to approve the rule change prior to the thirtieth day after publication of the notice of filing because by so approving OCC will be able to immediately commence clearing and settling nonequity fund options when Amex and CBOE commence trading them.

**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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2002–22 and should be submitted by December 26, 2002.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2002–22) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–30674 Filed 12–3–02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46902; File No. SR–PCX–2002–63]**

## Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Pacific Exchange, Inc., To Amend Its Clearly Erroneous Policy

November 25, 2002.

On September 23, 2002, the Pacific Exchange, Inc. (''PCX''), 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

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Because the term ''fund share'' is now being defined to include a broad class of securities, OCC will separately amend Filing No. SR–OCC–2002–04, which proposes to expand the forms of margin collateral accepted by OCC to include money market fund shares, to eliminate the few instances in which the same term is used to refer narrowly to money market fund shares.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

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

thereunder,[2] a proposed rule change relating to its ''Clearly Erroneous Policy.'' Notice of the proposed rule change was published for comment in the **Federal Register** on October 22, 2002.[3] No comments were received on the proposed rule change.

The PCX, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend PCXE Rule 7.11(d) to confer authority on a PCXE officer designated by PCXE who, in addition to the Chief Executive Officer and President, may nullify transactions or modify their terms arising out of any disruption or malfunction in the Archipelago Exchange trading system, the equities trading facility of PCXE. The rule change also adds conforming language to PCXE Rule 10.13 regarding appeals from such decisions.

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.[4] Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–PCX–2002–63) be, and it hereby is, approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 46661 (October 15, 2002), 67 FR 64950.

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

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46912; File No. SR–Phlx–2002–72]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Set Time Limits Within Which Phlx Members Must Request Credits Under the Phlx Monthly Credit Program

November 26, 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 October 31, 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. On November 26, 2002, the Phlx amended the proposed rule change.[3] The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Phlx under section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Phlx proposes to adopt certain provisions in connection with its Monthly Credit Program (''Program'').

*Background*

In May 2000, the Exchange adopted, for an aggregate period of 36 months,[5] the Program, which allows a monthly credit of up to $1,000 to be applied against fees, dues, charges and other amounts as may from time to time be owed to the Exchange that month (collectively referred to as ''credit-eligible fees''), except fines, late fees, out-of-pocket expenses, pass-through costs, capital funding fees, payment for order flow fees, any fees paid by equity trading permit (''ETP'') holders respecting any trading permits the Exchange may issue,[6] the fee for electronic communications networks, and the fee for the print subscription of the Phlx Guide by members who own the membership by which they are a member and certain other categories of members. The Program is in effect until May 16, 2003.

Pursuant to the Program, the amount of credit-eligible fees owed to the Exchange is reduced on a monthly basis by an amount equal to: (1) $1,000 per month if such fees, dues, charges and other amounts are equal to or greater than $1,000, or (2) the amount of such fees, dues, charges and other amounts if such fees, dues, charges and other amounts are less than $1,000. Credits may not be carried over from one month to the next and only one credit of up to $1,000 is available per membership per month.

Credits cannot be shared among members, except qualified member(s) in the same member organization may aggregate their credit(s). The monthly credit of up to $1,000 will be applied against the invoice of the member or member organization with which the member is associated. Currently, any request to receive the credit is application driven with each applicant submitting an Exchange form delineating the credit-eligible fees for that calendar month. A member's eligibility for the monthly credit is determined by the opening of trading on the first business day of each month.

*Proposal*

In connection with the Program, the Exchange has accrued on its books credit-eligible funds to be reimbursed to members who are eligible for the monthly credit of up to $1,000, but who have not submitted a request to receive

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

[2] 17 CFR 240.19b–4.

[3] *See* November 25, 2002, letter from Cynthia K. Hoekstra, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission (''Amendment No. 1''). In Amendment No. 1, the Phlx replaces the text in footnote 3 on page 2 (and also footnote 4 on page 9) of the original filing with new text. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on November 26, 2002, the date the Phlx filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] This aggregate period of 36 months includes the time period that previous pilot programs were in effect. The first monthly credit pilot program became effective upon filing on May 16, 2000, and lasted six months, expiring on November 16, 2000. *See* Securities Exchange Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000)(SR–Phlx–00–44). The pilot program was then extended for six months through May 16, 2001. *See* Securities Exchange Act Release No. 43567 (November 15, 2000), 65 FR 71187 (November 29, 2000)(SR–Phlx–00–100). Therefore, the Program will be in effect from May 16, 2000 until May 16, 2003. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001)(SR–Phlx–2001–49).

[6] In March 2002, this provision was amended to provide that ETP monthly fees are credit-eligible. *See* Securities Exchange Act Release No. 45480 (February 26, 2002), 67 FR 10029 (March 5, 2002)(SR–Phlx–2002–10).