

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2005-03 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2005-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2005-03 and should be submitted on or before February 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-326 Filed 1-27-05; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51061; File No. SR-PCX-00-15]

**Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendments No. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 3, 4, 5, 6, and 7 Thereto by the Pacific Exchange, Inc. To Require the Immediate Display of Customer Limit Orders**

January 21, 2005.

**I. Introduction**

On June 14, 2000, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend PCX Rule 6.55 to require the immediate display of customer limit orders. PCX filed Amendments No. 1 and 2 to the proposed rule change on August 1, 2000,<sup>3</sup> and October 17, 2000,<sup>4</sup> respectively. The proposed rule change, as amended by Amendments No. 1 and 2, was published for comment in the **Federal Register** on November 21, 2000.<sup>5</sup> No comments were received regarding the amended proposal.

PCX filed Amendments No. 3, 4, 5, 6, and 7 with the Commission on October

28, 2004,<sup>6</sup> November 18, 2004,<sup>7</sup> December 10, 2004,<sup>8</sup> December 31, 2004,<sup>9</sup> and January 7, 2005,<sup>10</sup> respectively. This order approves the proposed rule change and Amendments No. 1 and 2 and grants accelerated approval to and solicits comment on Amendments No. 3, 4, 5, 6 and 7.

**II. Description of Proposed Rule**

PCX proposes to amend PCX Rule 6.55 to codify an immediate display requirement with respect to eligible customer limit orders ("Display Obligation"). The text of the proposed rule change, as amended, follows. Additions are in *italics*. Deletions are in [brackets].

Displaying Bids and Offers in the Book Rule 6.55. The limit orders in the custody of an Order Book Official [shall] constitute *the* [his] book. *Each Order Book Official shall display immediately the full price and size of any customer limit order that improves the price or increases the size of the best disseminated PCX quote.* [So far as practicable, an Order Book Official shall continuously display, in a visible manner, the highest bid and lowest offer along with an indication of the number of option contracts bid for at the highest bid and offered at the lowest offer in his book in each option contract for which

<sup>6</sup> On October 28, 2004, PCX filed a Form 19b-4, which replaced the original filing and Amendments No. 1 and 2 in their entirety ("Amendment No. 3"). In Amendment No. 3, PCX proposes to revise the proposal to reflect changes to PCX's systems (*i.e.*, the approval and roll-out of PCX Plus) since the Notice was published for comment. Amendment No. 3 also added a number of exemptions to the Display Obligation, discussed in more detail below, which mirror exemptions proposed by the Chicago Board Options Exchange ("CBOE") and American Stock Exchange ("Amex") in recently-published proposals. See Securities Exchange Act Release Nos. 49916 (June 25, 2004), 69 FR 40422 (July 2, 2004) (SR-CBOE-2004-35) ("CBOE Notice") and 50188 (August 12, 2004), 69 FR 51495 (August 19, 2004) (SR-Amex-00-27) ("Amex Notice"), which we also approve today, see Securities Exchange Act Release Nos. 51063 (January 21, 2005) ("CBOE Approval") and 51062 (January 21, 2005) ("Amex Approval").

<sup>7</sup> See letter from Tania Blanford, Staff Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division, Commission, dated November 18, 2004 ("Amendment No. 4"). In Amendment No. 4, PCX proposes a minor modification to the exemptions to the Display Obligation.

<sup>8</sup> See Partial Amendment, dated December 10, 2004, submitted by Tania Blanford, Staff Attorney, PCX ("Amendment No. 5"). In Amendment No. 5, PCX proposes a minor modification to the exemptions to the Display Obligation.

<sup>9</sup> See Partial Amendment, dated December 31, 2004, submitted by Tania Blanford, Staff Attorney, PCX ("Amendment No. 6"). In Amendment No. 6, PCX proposes a minor modification to the exemptions to the Display Obligation.

<sup>10</sup> See Partial Amendment, dated January 7, 2005, submitted by Tania Blanford, Staff Attorney, PCX ("Amendment No. 7"). In Amendment No. 7, PCX proposes a minor modification to the exemptions to the Display Obligation.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 31, 2000 ("Amendment No. 1").

<sup>4</sup> See letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division, Commission, dated September 29, 2000 ("Amendment No. 2").

<sup>5</sup> See Securities Exchange Act Release No. 43550 (November 13, 2000), 65 FR 69979 ("Notice").

<sup>10</sup> 17 CFR 200.30-3(a)(12).

he is acting as Order Book Official.] *For the purpose of this rule "immediately" means as soon as practicable after receipt, which under normal market conditions means no later than 30 seconds after receipt. The term "customer limit order" means an order to buy or sell a listed option at a specified price that is not for the account of either a broker or dealer; provided, however, that the term customer limit order shall include an order transmitted by a broker or dealer on behalf of a customer. [provided, however, that where the highest bid or lowest offer is for more than twenty-five option contracts, or such other number of option contracts as may be prescribed from time to time by the Options Floor Trading Committee, the Order Book Official may display an indication that the bid or offer is for at least that number of option contracts. When required by market conditions, he may make such quotations available orally rather than by displaying them.] The following order types are exempt from the display obligation:*

(a) *An order executed upon receipt;*

(b) *An order where the customer who placed it requests that it not be displayed, and upon receipt of the order, the Floor Broker announces in public outcry the information concerning the order that would be displayed if the order were subject to being displayed;*

(c) *An order the terms of which are delivered immediately upon receipt to another options exchange that is a participant in the Intermarket Options Linkage Plan;*

(d) *Order types defined in PCX Rule 6.62(c)-(d), (f)-(h) and (j)-(k);*

(e) *Large-sized orders (orders for more than 100 contracts), unless the customer placing such order requests that the order be displayed;*

(f) *Orders received before or during a trading rotation (once the trading rotation ends and regular trading begins, orders received before or during the trading rotation will be subject to the display requirement).*

Commentary:

[.01 In displaying the highest bid or the lowest offer in his book for a particular option contract, an Order Book Official shall indicate the full size of such bid or offer if it is for 25 or fewer option contracts. If the highest bid or the lowest offer is for more than 25 option contracts, the Order Book Official shall display a size indication of at least 25 units, and may indicate at his discretion, a larger number.]

[.02] .01 Renumbered.

[.03] .02 Renumbered.

Currently, PCX Rule 6.55 provides that an Order Book Official ("OBO") "shall continuously display, in a visible manner, the highest bid and lowest offer along with an indication of the number of option contracts bid for at the highest bid and offered at the lowest offer in his book in each option contract for which he is acting as Order Book Official." The OBO may take custody of limit orders both manually and electronically. An order is entered manually into an OBO's custody when a Floor Broker places a written, time-stamped order ticket into the proper receptacle at the trading post.<sup>11</sup> Alternatively, an order is entered electronically into the OBO's custody when an OTP Holder or OTP Firm sends it to the Pacific Options Exchange Trading System ("POETS") or PCX Plus<sup>12</sup> via the Exchange's Member Firm Interface and the order, not being marketable, is electronically entered into the Consolidated Book<sup>13</sup> via the Auto-Ex Book<sup>14</sup> function of POETS or via PCX Plus. Orders entered electronically into the Consolidated Book are immediately displayed on the overhead screens on the trading floor and disseminated to the public via the Options Price Reporting Authority ("OPRA"). Orders entered manually must be entered into POETS or PCX Plus before being displayed on the floor or disseminated via OPRA.

Under the proposal, OBOs would be required to display immediately the price and full size of any eligible customer limit order that improves the price or increases the size of the best disseminated PCX quote. PCX proposes to define "immediately" to mean, under normal market conditions, as soon as practicable but no later than 30 seconds after receipt by the OBO.<sup>15</sup> PCX proposes to define the term "customer limit order" as "an order to buy or sell a listed option at a specified price that is not for the account of either a broker or dealer; provided, however, that the term customer limit order shall include an order transmitted by a broker or dealer on behalf of a customer."

<sup>11</sup> See PCX Rule 6.52, Commentary .04. A Floor Broker must use due diligence in handling an order that it represents as agent. See generally PCX Rule 6.46.

<sup>12</sup> See Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (order approving PCX Plus).

<sup>13</sup> See PCX Rule 6.1(b)(37).

<sup>14</sup> See PCX Rule 6.87(1).

<sup>15</sup> In its filing, PCX states that "receipt by the OBO" means receipt on POETS or the PCX Plus system, which is consistent with the firm quote definition of "time of receipt." This means that the time of receipt is when the order is received on POETS or PCX Plus, even if the OBO does not happen to see it for several seconds.

PCX proposes to exempt, or partially exempt, certain order types from the Display Obligation. Specifically, PCX proposes to exempt orders executed upon receipt as well as any order where the customer who placed it requests that the order not be displayed, if upon receipt of the order, the Floor Broker announces via public outcry the information about the order that would be displayed if the order were subject to display.<sup>16</sup> PCX further proposes to exempt from the Display Obligation a customer order the terms of which are delivered, immediately upon receipt, to another options exchange that participates in the options intermarket linkage plan.<sup>17</sup>

The Exchange also proposes to exempt, or partially exempt, from the Display Obligation the following types of orders set forth in PCX Rule 6.62(c)-(d), (f)-(h) and (j)-(k):

Contingency orders: Stop-limit orders (PCX Rule 6.62(c)(1)) and stop (stop-loss) orders (PCX Rule 6.62(c)(2))—These orders are not executable until the market reaches a specified "trigger" price, at which point a stop-limit order converts to a limit order and a stop order converts to a market order. As such, these orders are not available to trade and have no standing in the quoted markets until the specified price trigger is reached. However, the limit order resulting from a triggered stop-limit order is subject to the Display Obligation.

Complex orders: Spread orders (PCX Rule 6.62(d)); straddle orders (PCX Rule 6.62(g)); combination orders (PCX Rule 6.62(h)); stock/option orders (PCX Rule 6.62(j)(1)); and ratio orders (PCX Rule 6.62(k))—These orders specify instructions to trade more than one options series or product as a package,

<sup>16</sup> While the Exchange's proposed Display Obligation would be imposed on the OBO, the OBO, who does not hold customer orders, cannot take custody of a limit order that a customer has instructed not to be displayed. Under PCX Rule 6.46(a) and (f) and Commentaries .01 and .05 thereto, the Floor Broker, as the person holding the order, will have the obligation to vocalize the information concerning the order that would be displayed if the order were subject to being displayed. Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Nathan Saunders, Attorney, Division, Commission, November 9, 2004.

<sup>17</sup> See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (order approving the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage). The Exchange represents that if such a related order that is delivered immediately upon receipt to another options exchange that is a participant in the intermarket options linkage plan were canceled, in whole or in part, by the other options exchange, then the OBO would be obligated to display immediately upon receipt of the cancellation notice the price and size of the customer order as set forth in proposed PCX Rule 6.55.

typically at a specified net debit or credit as opposed to at a specific limit price for each leg involved. Therefore, there is no specified limit price for each leg of the order to display in the Exchange's disseminated quotes. Moreover, OPRA does not accept complex order quotes at net prices.

One-cancels-the-other orders (PCX Rule 6.62(f))—A one-cancels-the-other order consists of two or more orders treated as a unit. The execution of any one of the orders causes the others to be cancelled. If the Floor Broker cannot execute any of the orders upon receipt, then none can be displayed or booked as doing so could result in the approximately simultaneous execution of more than one component order, in direct contravention of the primary order condition.

Large sized orders—The Commission's Display Rule, Rule 11Ac1-4 under the Act,<sup>18</sup> applicable to customer limit orders received in the equity market, provides a general exclusion for block size orders of at least 10,000 shares.<sup>19</sup> PCX proposes to adopt a similar exemption for large sized orders. Accordingly, there would be no obligation to display orders for more than 100 contracts, unless the customer placing such order requests otherwise.

Orders received during a trading rotation—Orders received before or during a trading rotation (as defined in PCX Rule 6.64) would be exempt from the 30-second standard. During a rotation, the PCX systems attempt to find the opening price and until the opening price is established, there is no disseminated market. Once the trading rotation ends and regular trading begins, orders received before or during the trading rotation would be subject to the Display Obligation.

Finally, PCX proposes to delete language in PCX Rule 6.55, Commentary .01, referring to display obligations where the highest bid or lowest offer is for more than twenty-five option contracts as such language is no longer applicable.

### III. Commission Findings and Order Granting Approval

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>20</sup> and, in particular, the requirements of section 6(b)(5) of the

Act,<sup>21</sup> which requires, among other things, that the rules of an exchange be 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Commission believes that the immediate display of customer limit orders that improve the price or size of the best disseminated PCX quote should promote transparency and enhance the quality of executions of customer limit orders on PCX.

The proposed amendments to PCX Rule 6.55 introduce requirements for customer limit order display that are comparable to the requirements of the Commission's Display Rule, which is applicable to customer limit orders received in the equity market. In addition, the Commission believes that the Exchange's proposal to exempt large sized orders from the Display Obligation is reasonable since a substantially similar exemption is set forth in the Commission's Display Rule.

The Commission also believes that it is consistent with the Act for PCX to exempt from the Display Obligation under its rules stop-limit and stop or stop-loss orders. These orders are contingent orders that are subject to a particular triggering event and, thus, are not available for execution until the triggering event occurs. A stop-loss order becomes a market order when triggered and thus is not subject to the Display Obligation because such an order would then be immediately executable. A stop-limit order becomes a limit order when the triggering event occurs. This limit order would be subject to the Display Obligation. Spread, straddle, combination, stock/option, ratio and one-cancels-the-other orders are complex orders with more than one component and, thus, the Commission believes, are not suitable for display.

During a trading rotation, PCX systems attempt to set an opening price for the series. Until that opening price is established, there is no disseminated market. Therefore, it is reasonable to exempt orders received before or during a trading rotation from the Display Obligation. The Commission notes, however, that once the trading rotation ends, any orders not executed would

then be subject to the Display Obligation.

Finally, the Exchange proposes to exempt from the Display Obligation customer orders the terms of which are delivered, immediately upon receipt, to another options exchange. The Commission believes it is reasonable to exempt such orders since they are subject to execution upon receipt at the other options exchange. Moreover, the Exchange represents that if the order delivered to the other options exchange were canceled, in whole or in part, by the other exchange, then the original customer order would be subject to the Display Obligation immediately upon receipt of the cancellation notice by the Exchange.

The Commission finds good cause for approving Amendments No. 3, 4, 5, 6, and 7 to the proposed rule change prior to the thirtieth day after their publication in the **Federal Register**, pursuant to section 19(b)(2) of the Act.<sup>22</sup> Amendment No. 3 would revise the proposal to reflect changes to PCX's systems since the Notice was published for comment. These revisions are necessary given recent changes to PCX's systems, such as the approval and implementation of the PCX Plus electronic trading platform, but do not alter the primary purpose of the proposal: to require immediate display of customer limit orders on the Exchange.

In Amendment No. 3, PCX also proposes several exemptions to the Display Obligation. The Commission notes that these exemptions, discussed in detail in Part II above, are substantially identical to exemptions proposed by CBOE and Amex in their customer limit order display proposals, which were recently noticed for full 21-day comment periods.<sup>23</sup> No comments were received on either the CBOE or Amex proposal. Amendments No. 4, 5, 6, and 7 proposed minor modifications to the proposed rule text, and thus are appropriate for accelerated approval.

Accelerated approval of Amendments No. 3, 4, 5, 6, and 7 will permit the Exchange to implement the proposal in an expeditious manner, *i.e.*, simultaneously with the implementation of similar proposals by CBOE, Amex and the Philadelphia Stock Exchange ("Phlx"), which we also approve today.<sup>24</sup> The Commission,

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> See CBOE Notice and Amex Notice, *supra* note 6.

<sup>24</sup> See CBOE Approval, *supra* note 6; Amex Approval, *supra* note 6; and Securities Exchange Act Release No. 51064 (January 21, 2005) (notice of

<sup>18</sup> 17 CFR 240.11Ac1-4.

<sup>19</sup> See 17 CFR 240.11Ac1-4(c)(4).

<sup>20</sup> 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).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

therefore, believes that good cause exists, consistent with section 6(b)(5)<sup>25</sup> and section 19(b)<sup>26</sup> of the Act, to accelerate approval of Amendments No. 3, 4, 5, 6, and 7.

#### IV. Solicitation of Comments Concerning Amendments No. 3, 4, 5, 6, and 7

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 3, 4, 5, 6, and 7, including whether they are consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-00-15 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-00-15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-PCX-00-15 and should be submitted on or before February 18, 2005.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change (File No. SR-PCX-00-15), as amended, be approved, and that Amendments No. 3, 4, 5, 6, and 7 thereto be approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-327 Filed 1-27-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51060; File No. SR-Phlx-2005-01]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating To Imposing a New Licensing Fee in Connection With the Firm-Related Equity Option and Index Option Fee Cap

January 19, 2005.

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 January 10, 2005, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") 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 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, pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder, proposes to amend its schedule of fees to adopt a license fee of \$.10 for options traded on the Standard & Poor's Depository Receipts®, Trust Series 1 ("SPDRs"), traded under the symbol

SPY ("SPY"),<sup>3</sup> to be assessed per contract side for equity option "firm" transactions (comprised of equity option firm/proprietary comparison transactions, equity option firm/proprietary transactions and firm/proprietary facilitation transactions). This license fee will be imposed only after the Exchange's \$60,000 "firm-related" equity option and index option comparison and transaction charge cap, described more fully below, is reached.

Currently, the Exchange imposes a cap of \$60,000 per member organization<sup>4</sup> on all "firm-related" equity option and index option comparison and transaction charges combined.<sup>5</sup> Specifically, "firm-related" charges include equity option firm/proprietary comparison charges, equity option firm/proprietary transaction charges, equity option firm/proprietary facilitation transaction charges, index option firm (proprietary and customer executions) comparison charges, index option firm/proprietary transaction charges, and index option firm/proprietary facilitation transaction charges (collectively, "firm-related charges"). Thus, such firm-related charges for equity options and index options, in the aggregate for one billing month, may not exceed \$60,000 per month per member organization.

The Exchange also imposes a license fee of \$.10 per contract side for equity option "firm" transactions on options on Nasdaq-100 Index Tracking Stocks<sup>6</sup>, traded under the symbol

<sup>3</sup> "Standard & Poor's," "S&P®," "S&P 500®," "Standard & Poor's 500®," "Standard & Poor's Depository Receipts®," and "500" are trademarks of The McGraw-Hill Companies, Inc., and have been licensed for use by the Philadelphia Stock Exchange, Inc., in connection with the listing and trading of SPDRs, on the Phlx. These products are not sponsored, sold or endorsed by Standard & Poor's, a division of The McGraw-Hill Companies, Inc., and Standard & Poor's makes no representation regarding the advisability of investing SPDRs.

<sup>4</sup> The firm/proprietary comparison or transaction charge applies to member organizations for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customers. Member organizations are required to verify this amount to the Exchange by certifying that they have reached this threshold and by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). In the event that a member organization has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted. See Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (SR-Phlx-00-85).

<sup>5</sup> See Securities Exchange Act Release No. 51024 (January 11, 2005), 70 FR 3088 (January 19, 2005) (File No. SR-Phlx-2004-94).

<sup>6</sup> The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares<sup>SM</sup>, Nasdaq-100 Trust<sup>SM</sup>, Nasdaq-100 Index

filing and order granting accelerated approval to SR-Phlx-2004-73).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 15 U.S.C. 78s(b).

<sup>27</sup> *Id.*

<sup>28</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.