

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

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

The purpose of the proposed rule filing is to modify Versions 1 and 2 of Addendum B, Standards of Financial Responsibility and Operational Capability, of NSCC's Rules and Procedures to eliminate all references to Class I and Class II security surveillance, as NSCC does not place securities on surveillance status.

The proposed rule change accurately reflects the functions performed by NSCC and constitutes a stated practice with respect to the administration and enforcement of an existing rule; therefore, NSCC believes it is consistent with the provisions of the Act and the rules and regulations thereunder.

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

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1)⁴ thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, enforcement, or

administration of an existing rule. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NSCC-2002-11. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR-NSCC-2002-11 and should be submitted by February 12, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 47178; File No. SR-PCX-2002-74]

Self-Regulatory Organizations; Order Granting Accelerated Approval to a Rule Change Proposed by the Pacific Stock Exchange, Inc. Relating to Two New Order Types on the Archipelago Exchange

January 13, 2003.

On December 9, 2002, the Pacific Stock Exchange, Inc. ("PCX") filed a proposed rule change with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder² to adopt two new order types, an Immediate-or-Cancel ("IOC") Cross Order and a Post No Preference ("PNP") Cross Order, on its equities trading facility, the Archipelago Exchange ("ArcaEx"). The PCX also proposed to allow the new order types to be subject to the recent *de minimis* exemption from the trade-through restrictions of the Intermarket Trading System Plan in certain exchange-traded funds.³

The Commission published notice of the proposed rule change for comment in the **Federal Register** on December 24, 2002.⁴ The Commission received no public comments with respect to the proposal. This order grants accelerated approval to the PCX's proposed rule change.

The PCX requested that the Commission grant accelerated approval to the proposed rule change pursuant to section 19(b)(2) of the Act⁵ so that the PCX may implement the new order types before the 30th day after publication of the notice in the **Federal Register**. The PCX represented that the proposed IOC Cross and PNP Cross order types would promote a more efficient and effective market operation and enhance the investment choices available to investors in the handling of their orders. Moreover, with respect to the proposal to amend PCXE rule 7.37, the PCX believes that the proposed rule change would allow market participants to take full advantage of the *de minimis*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) (Order of the Commission pursuant to section 11A of Act).

⁴ See Securities Exchange Act Release No. 47010 (December 16, 2002), 67 FR 78554 (December 24, 2002). The 15-day comment period ran through January 8, 2003.

⁵ 15 U.S.C. 78s(b)(2).

² The Commission has modified parts of these statements.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

⁵ 17 CFR 200.30-3(a)(12).

exception to the ITS Plan's trade-through rule.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities exchange.⁶ Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,⁷ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with person 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.

The Commission also finds good cause to approve the proposed rule change before the 30th day after the date of publication of notice in the **Federal Register**. The Commission believes that the proposed change to PCXE rule 7.37 is consistent with the terms and spirit of the *de minimis* exemption from the trade-through restrictions of the ITS Plan, and will allow market participants to further benefit from this exemption. The Commission believes that the proposed IOC Cross and PNP Cross order types will promote an efficient and effective market operation and will offer investors additional choices in the handling of their orders. Accelerated approval of the proposal will make the proposed order types available to investors more quickly and without undue delay. Accordingly, the Commission finds it appropriate to approve the proposed rule change before the 30th day after the date of publication in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-PCX-2002-74) is hereby approved and shall become effective immediately.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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⁶ In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47166; File No. SR-Phlx-2002-61]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. To Amend Options Floor Procedure Advice A-13 To Include Violations for Failure To Obtain Approval To Disengage the NBBO Feature in the Exchange's Minor Rule Plan

January 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 4, 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 7, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.³ 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

Phlx proposes to amend Phlx Option Floor Procedure Advice ("OFPA") A-13, Auto Execution Engagement/Disengagement Responsibility, to include violations for failure to obtain the necessary approvals prior to disengagement of the Exchange's NBBO Step-Up Feature. The text of the proposed rule change is set forth below. Proposed new text is italicized; deleted language is in brackets.

A-13 Auto Execution Engagement/Disengagement Responsibility (EQUITY OPTION AND INDEX OPTION ONLY)

(a) It is the responsibility of the option Specialist to engage the Auto Execution (Auto-X) system for an assigned option within three (3) minutes of completing the opening or reopening rotation of that option.

Where extraordinary circumstances occur, a Specialist may be provided an

exemption from receiving orders through Auto-X and may then disengage the system upon approval by two Floor Officials. Five minutes subsequent to the disengagement of AUTO-X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO-X is disengaged), the requesting Specialist [of] or his/her designee, two Floor Officials, and a designated surveillance staff person, shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO-X will be re-engaged with either: (i) Specialist [of] or his/her designee determines that the conditions supporting the extraordinary circumstances no longer exist, at which time the Specialist or his/her designee shall inform the Market Surveillance staff that the extraordinary circumstances no longer exist and that the Specialist is re-engaging AUTO-X; or (ii) when two Floor Officials and the designated surveillance staff person determine that the conditions supporting the extraordinary circumstances no longer exist. In the event extraordinary circumstances exist floor-wide, two Exchange Floor Officials and the Chairperson of the Options Committee or his/her designee may determine to disengage the AUTO-X feature floor-wide. Five minutes subsequent to a floor-wide disengagement of AUTO-X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO-X is disengaged), two Floor Officials, the Chairperson of the Options Committee or his/her designee and a designated Market Surveillance staff person shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO-X will be re-engaged when either[;]: (1) the Specialist determines that the conditions supporting the extraordinary circumstances no longer exist for their particular class of options at which time the Specialist or his/her designee will inform Market Surveillance staff that the extraordinary circumstances no longer exist for their particular class of options and that the Specialist is re-engaging AUTO-X; or (2) when two Floor Officials, the Chairperson of the Options Committee or his/her designee and the designated Market Surveillance staff person determine that the extraordinary circumstances no longer exist. The NBBO feature is always disengaged when AUTO-X is disengaged.

Extraordinary circumstances include market occurrences and system malfunctions that impact a Specialist's ability to accurately price and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Rick Rudolph, Director and Counsel, Phlx, to Jennifer Lewis, Commission, dated November 6, 2002 ("Amendment No. 1"). In Amendment No. 1, Phlx fixed nonsubstantive typographical errors in its rule text, and added a cross-reference to Phlx Rule 960.2 in the purpose section of its proposal.