SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48158; File No. SR–PCX–2003–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Exchange's Rules Under the Minor Rule Plan

July 10, 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 15, 2003, the Pacific Exchange, Inc. (''PCX'' 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 June 6, 2003, the PCX filed Amendment No. 1 to the proposed rule change. 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 proposed rule change was submitted in response to the Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Act, Making Findings and Imposing Remedial Sanctions.[3] Pursuant to the Order, the Exchange filed a proposed rule change to adopt new Sanctioning Guidelines for order handling rules which included late trade reporting.[4] At that time, the Exchange stated that it intended to amend its Minor Rule Plan (''MRP'') to increase the sanctions for late trade reporting violations. The Exchange believes that an increase in sanctions is necessary to deter violations of its trade reporting rule. Accordingly, the PCX is proposing to amend the Recommended Fine Schedule (''RFS'') of the MRP in order to increase the fines for Late Trade Reporting violations pursuant to PCX Rule 6.69(a). The text of the proposed rule change is below. Proposed new language is *italicized;* proposed deletions are in brackets.

* * * * *

Minor Rule Plan

Rule 10.13

(a)–(j)—No change.

(k)(i) Minor Rule Plan: Recommended Fine Schedule

1–37—No change.

38. Late reporting of trades without reasonable justification or excuse (Rule 6.69(a)).

1st Violation $[100] *250*
2nd Violation $[250] *500*
3rd Violation $[500] *1,000*

* * * * *

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. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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

The Exchange proposes to amend the RFS (PCX Rule 10.13(k)(i)(38)) of the MRP in order to increase the fines for Late Trade Reporting violations. PCX Rule 6.69(a) states that all members and member organizations, who are required to report trades either directly to the Options Price Reporting Authority (''OPRA'') or to another party responsible for reporting trades to OPRA, shall report the transaction immediately upon execution, which means no later than 90 seconds following execution of the trade.

The purpose of the proposed rule change is based on the following: first, the PCX believes that the current fines are inconsistent with the vast majority of fines that are subject to the MRP. Second, the PCX believes that an increase in the current fines will more adequately sanction and deter violations of late trade reporting. Under the proposed increase, late trade reporting will be fined $250 for a first violation, $500 for a second, and $1,000 for a third, calculated on a two-year basis.

The Exchange believes that the adoption of the proposed rule change will serve to significantly strengthen the ability of the Exchange to carry out its oversight responsibilities as a self-regulatory organization. The rule should also aid the Exchange in carrying out its surveillance and enforcement functions. Under the proposed rule change, the Enforcement Department would continue to exercise its discretion under PCX Rule 10.13(f) and take cases out of the MRP to pursue them as formal disciplinary matters if the facts or circumstances warrant such action.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[5] in general, and section 6(b)(5) of the Act,[6] in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest. The Exchange believes that the proposal is also consistent with section 6(b)(6) of the Act,[7] which requires that members and persons associated with members be appropriately disciplined for violations of Exchange rules.

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

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43268 (September 11, 2000) (File No. 3–10282).

[4] *See* Securities Exchange Act Release No. 45416 (February 7, 2002), 67 FR 6777.

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

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 number SR–PCX–2003–17 and should be submitted by August 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–48166; File No. SR–Phlx–2002–87)

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. and Amendment No. 1 Thereto Relating to the Imposition of a 500 Contract Cap on Payment for Order Flow Fees

July 11, 2003.

On December 26, 2002, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] the Philadelphia Stock Exchange, Inc. (''Phlx'') filed with the Securities and Exchange Commission a proposal to impose a 500-contract cap on fees in connection with its payment for order flow program. On May 29, 2003, the Phlx filed Amendment No. 1 to the proposed rule change. Under the proposal, the applicable payment for order flow fee would be imposed only on the first 500 contracts per individual cleared side of a transaction.

The proposed rule change was published for comment in the **Federal Register** on June 6, 2003.[3] The Commission received no comments on the proposal.

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, particularly section 6(b) of the Act[4] and the rules and regulations thereunder.[5] The Commission finds that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among Phlx members and other persons using the Phlx's facilities, consistent with Section 6(b)(4) of the Act.[6]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–Phlx–2002–87) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18123 Filed 7–16–03; 8:45 am]

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47958 (May 30, 2003), 68 FR 34026 (June 6, 2003).

[4] 15 U.S.C. 78f(b).

[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(b)(4).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48163; File No. SR–Phlx–2003–46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Extension of Interpretation of PACE Guarantees in Securities Subject to ITS Plan Exemption

July 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on June 26, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

The proposal is intended to coincide with the Commission's extension of a *de minimis* exemption from the trade-through provisions of the Intermarket Trading System (''ITS'') Plan with respect to certain transactions in the Nasdaq-100 Index (''QQQs''), the Dow Jones Industrial Average (''DIAMONDs''), and the Standard & Poor's 500 Index (''SPDRs'').[3] The Commission's original exemption expired on June 4, 2003. The Exchange Rule that mirrors the Commission's exemption similarly expired on June 4, 2003.[4] The Commission recently extended the effectiveness of the exemption to March 4, 2004.[5] In order to avoid a lapse in the effectiveness of the corresponding Exchange Rule, this order is approving the Exchange's proposal to extend the rule from June 5, 2003 until March 4, 2004.

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

The Phlx proposes to extend a limited exemption in transactions in certain exchange-traded fund (''ETFs'') shares from Supplementary Material Section .10(a)(iii) of Exchange Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System (''PACE'') beyond June 4, 2003.[6] The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

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 Phlx included statements concerning

[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) at 56607 (''ITS Exemption Order'').

[4] *See* Securities Exchange Act Release No. 46761 (November 1, 2002), 67 FR 68222 (November 8, 2002)(order approving SR–Phlx–2002–49).

[5] *See* Securities Exchange Act Release No. 47950 (May 30, 2003), 68 FR 33748 (June 5, 2003)(order extending ITS Exemption Order).

[6] PACE is the Exchange's Automated Communication and Execution System. PACE provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions.