Chan, dated November 19, 2002 (''Chan Letter ''); Jireh Chao, Jr., undated (''Chao, Jr. Letter''); Jake Chun, undated (''Chun Letter''); Robert Cope, dated November 19, 2002 (''Cope Letter''); Daniel J. Cosenza, dated November 19, 2002 (''Cosenza Letter''); Dario Cosic, dated November 19, 2002 (''Cosic Letter''); Jay Crosby, undated (''Crosby Letter''); Glen Cutler, undated (''Cutler Letter''); Francis B. DeLuca, undated (''Deluca Letter''); Brian Dershow, dated November 19, 2002 (''Dershow Letter''); Timothy K. Dolnier, undated (''Dolnier Letter''); David Dondero, undated (''Dondero Letter''); Michael Elmes, undated (''Elmes Letter''); Michael Elzahr, dated November 20, 2002 (''Elzhar Letter''); Tolga Erman, undated (''Erman Letter''); Michael Feeney, undated (''Feeney Letter''); Chris Freddo, undated (''Freddo Letter''); Elizabeth Goldstein, dated November 19, 2002 (''Goldstein Letter''); Jeff Gregario, undated (''Gregario Letter''); Cary S. Grill, dated November 19, 2002 (''Grill Letter''); Brian Gutbrod, undated (''Gutbrod Letter''); Charles William Hansford, dated November 19, 2002 (''Hansford Letter''); Zachary Hepner, November 18, 2002 (''Hepner Letter''); James Hochleutner, undated (''Hochleutner Letter''); Jonathan W. Hodges, dated November 20, 2002 (''Hodges Letter''); Edward E. Hong, undated (''Hong Letter''); Bradford O. Hotchkiss, dated November 18, 2002 (''Hotchkiss Letter''); Brian Ingram, dated November 20, 2002 (''Ingram Letter''); Aaron Israel, undated (''Israel Letter''); Jeremy Ives, dated November 19, 2002 (''Ives Letter''); Kevin Jahng, dated November 19, 2002 (''Jahng Letter''); Joel Jones, undated (''Jones Letter''); Matthew Keegan, dated November 19, 2002 (''Keegan Letter''); John Kernan, undated (''Kernan Letter''); Saeyoon Kim, dated November 19, 2002 (''Kim Letter''); Keith Kirstein, dated November 19, 2002 (''Kirstein Letter''); Gregory Kleiman, undated (''Kleiman Letter''); Eric P. Knight, undated (''Knight Letter''); David Kobin, dated November 18, 2002 (''Kobin Letter''); Aaron Kravitz, dated November 19, 2002 (''Kravitz Letter''); Ira Landsman, dated November 19, 2002 (''Landsman Letter''); Richard Lay, dated November 19, 2002 (''Lay Letter''); Samson Leung, undated (''Leung Letter''); Bronson C. Lingamfelter, undated (''Lingamfelter Letter''); Alex J. Lopez, undated (''Lopez Letter''); Michael Lucarello, undated (''Lucarello Letter''); Eugene Lum, dated November 19, 2002 (''Lum Letter''); Richard Lutz, undated (''Lutz Letter''); Jefferson Magat, dated November 19, 2002 (''Magat Letter''); Dax L. Mathews, dated November 19, 2002 (''Mathews Letter''); Kevin Medvin, (''Medvin Letter''); Robert Merrill, dated November 19, 2002 (''Merrill Letter''); Marc Miller, dated November 18, 2002 (''Miller Letter''); John J. Morgan, dated November 20, 2002 (''Morgan Letter''); Angelo Nicoletta, dated November 19, 2002 (''Nicoletta Letter''); Charles Nierling, dated November 19, 2002 (''Nierling Letter''); Michael O'Malley, dated November 20, 2002 (''O'Malley Letter''); Robert L. Oliver, Jr., November 17, 2002 (''Oliver, Jr. Letter''); Chris M. Paper, undated (''Paper Letter''); Boris Piskun, dated November 19, 2002 (''Piskun Letter''); Tal Plotkin, dated November 20, 2002 (''Plotkin Letter''); Frank Raffaele, dated November 18, 2002 (''F. Raffaele Letter''); John J. Raffaele, dated November 18, 2002 (''J. Raffaele Letter''); Richard Rebatta, dated November 18, 2002 (''Rebatta Letter''); John Schmidt, dated November 18, 2002 (''Schmidt Letter''); Matthew Schroeder, November 19, 2002 (''Schroeder Letter''); Jonathan Schuldenfrei, dated November 20, 2002 (''Schuldenfrei Letter''); David Schwarz, dated November 18, 2002 (''Schwarz Letter''); Drew Aaron Segal, dated November 19, 2002 (''Segal Letter''); Sinan Selcuk, dated November 19, 2002 (''Selcuk Letter''); Tal Sharon, dated November 20, 2002 (''Sharon Letter''); Theodore Siegel, dated November 20, 2002 (''Siegel Letter''); Dan Solomon, dated November 20, 2002 (''Solomon Letter''); Douglas Song, dated November 19, 2002 (''Song Letter''); Doug Squires, dated November 19, 2002 (''Squires Letter''); Igor Stancevic, dated November 19, 2002 (''Stancevic Letter''); Joe Tan, dated November 20, 2002 (''Joe Letter''); Howard Teitelman, dated November 19, 2002 (''Teitelman Letter''); Harlan Thompson, undated (''Thomson Letter''); Richard J. Travers III, dated November 19, 2002 (''Travers III Letter''); Michael W. Vaughn, dated November 19, 2002 (''Vaughn Letter''); Isaak Volodarsky, dated November 19, 2002 (''Volodarsky Letter''); Eric Walania, dated November 20, 2002 (''Walania Letter''); Alexander Wang, dated November 20, 2002 (''Wang Letter''); Sean Ward, dated November 19, 2002 (''Ward Letter''); Matthew Weinshall, dated November 20, 2002 (''Weinshall Letter''); Joshua Weitnraub, dated November 19, 2002 (''Weintraub Letter''); Scott Westrick, dated November 19, 2002 (''Westrick Letter''); Travis P. Whitten, undated (''Whitten Letter''); Jimmie E. Williams, dated November 19, 2002 (''Williams Letter''); Kevin Yang, dated November 20, 2002 (''Yang Letter''); Paul Yiacas, undated (''Yiacas Letter''); and Daniel You, dated November 19, 2002 (''You Letter'').

[6] *See e.g.*, Solomon Letter; Landsman Letter; Sharon Letter; Knight Letter; Jahng Letter; Hochleutner Letter; Chao, Jr. Letter; Dershow Letter; Cammarata Letter; Cosenza Letter; and Weinshall Letter.

[7] *See e.g.*, Chan Letter; J. Raffaele Letter; Volodarsky Letter; Plotkin Letter; Erman Letter; and Tan Letter.

[8] *See* Weinshall Letter.

[9] *See e.g.*, Feeney Letter; Squires Letter; Stancevic Letter; Miller Letter; Vaughn Letter; Paper Letter; and Whitten Letter.

[10] *See e.g.*, Jones Letter; Piskun Letter; Cosic Letter; Schroeder Letter; Westrick Letter; and Freddo Letter.

[11] *See e.g.*, Selcuk Letter; Kravitz Letter; Lay Letter; Dolnier Letter; and Elzahr Letter.

[12] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

proposed rule change would level the playing field between large and small firms [6] and allow greater access to the NYSE floor.[7] Specifically, one commenter noted that ''[w]hile larger firms have NYSE floor brokers and hence direct access to the liquidity of the market and exposure to block orders, smaller firms must rely on the DOT system and Direct Plus.''[8] Commenters also stated that the proposal would provide greater transparency and liquidity in the market place.[9] Other comments stated that the proposed amendment would increase speed of executions.[10] Finally, many commenters stated that traders at a firm who make independent decisions should not be considered to be ''one firm'' for purposes of complying with the 30 second restriction in NYSE Rule 1005.[11]

III. Discussion

After careful review, 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.[12] Specifically, the Commission believes the proposed rule change is consistent with section 6(b)(5) of the Act,[13] which requires among other things, that the rules of the Exchange are 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and national market system, and in general to protect investors and the public interest. The Commission believes that the proposed rule change is a reasonable expansion of the Direct + pilot and should allow individual traders greater flexibility and access to the trading interest reflected in the Exchange's published quotation. In addition, the Commission believes that the separate terminal requirement should help to ensure that traders are not circumventing the restriction on order size. The Commission notes that the Exchange has represented that it will surveil for compliance with this requirement when conducting periodic reviews of member organizations.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–2002–58) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4044 Filed 2–19–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78f(b)(5).

[14] Id.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47352; File No. SR–PCX–2003–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend the Price Criteria for Securities That Underlie Options Traded on the Exchange

February 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4

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

thereunder,[2] notice is hereby given that on February 10, 2003, the Pacific Exchange, Inc. (''PCX'' 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 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 Exchange proposes to amend PCX Rule 3.6 in order to amend its pricing requirement for securities that underlie options traded on the Exchange (''underlying security''). The text of the proposed rule change follows. Additions are in *italics.* Deleted text is in brackets.

Rules of the Board of Governors

Rule 3.6. The underlying securities of option contracts traded on the Exchange shall be approved for Exchange transactions by the Board of Governors following the recommendation of the Options Listing Committee. In approving underlying securities, both the Options Listing Committee and the Board shall give due regard to, and the Board shall promulgate guidelines relative to, the following factors:

(a)—No change.

(1)–(3)—No change.

(4) [Either (i) the market price per share of the underlying security will have been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price recorded in any market in which the underlying security traded on each of the subject days;] *(A) If the underlying security is a ''covered security'' as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation for listing and trading. For purposes of this rule, the market price of such underlying security is measured by the closing price reported in the primary market in which the underlying security is traded.*

(B) If the underlying security is not a ''covered security'', the market price per share of the underlying security has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days, or [(ii)](a) the underlying security meets the guidelines for continued listing in Rule 3.7; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been at least 5,000 contracts; and

(5)—No change.

(b)–(c)—No change.

Commentary:

.01–.04—No change.

.05 (a)–(c)—No change.

(d) In the case of a Restructured Transaction that satisfies either or both of the conditions of subsections (a)(1) and (a)(2) to this Commentary .05 in which shares of a Restructured Security are sold in a public offering or pursuant to a rights distribution:

(i)—No Change.

(ii) the exchange may certify that the market price of the Restructure Security satisfies the requirement of Rule 3.6(a)(4) by relying on the market price history of the Original Security prior to the ex-date for the Restructuring Transaction in the manner described by subsection (a) to this Commentary .05, but only if the Restructure Security has traded ''regular way'' on an exchange or automatic quotation system for at least five trading days immediately preceding the date of selection, and at the close of trading on each trading day preceding the date of selection, as well as the opening of trading on the date of selection the market price of the Restructure Security was at least $7.50; *or, if the Restructure Security is a Covered Security as defined in paragraph (a)(4) above, the market price of the Restructure Security was at least $3.00;* and

(iii)—No change.

.06– .07—No change.

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 Exchange 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 III 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 its pricing requirement for underlying securities. Currently, PCX Rule 3.6 requires that the market price per share of any underlying security must be at least $7.50 for the majority of business days during the three calendar months preceding the date of selection of an option class, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.

The Exchange now proposes to amend Rule 3.6 to provide that, for underlying securities that are deemed Covered Securities, as defined under section 18(b)(1)(A) of the Securities Act of 1933 (''1933 Act''),[3] the closing market price of the underlying security must be at least $3.00 per share for the five previous consecutive business days prior to the date on which PCX submits an option issue certification. For underlying securities that are not Covered Securities, the Exchange states that the current $7.50 price per share requirement would continue to apply.

When the $7.50 price requirement was first implemented, the listed options market was in its infancy. Now more than twenty-eight years after the PCX first started trading listed options, the Exchange states the listed options market is a mature market with sophisticated investors. The Exchange does not believe that this particular criteria serves to accomplish its presumed intended purpose, *i.e.*, to prevent the proliferation of option issues on overlying securities that lack liquidity needed to maintain fair and orderly markets. The Exchange states that it now seeks to move away from what it believes is a paternalistic approach to listing standards and allow the desires of its customers and the workings of the marketplace to determine the securities on which the Exchange will list options.

In determining to list any number of new option classes, the Exchange must

[2] 17 CFR 240.19b–4.

[3] Section 18(b)(1)(A) of the 1933 Act provides that, ''(a) security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market * * *'' 15 U.S.C. 77r(b)(1)(A). The term Covered Security, for the operation of proposed amendments to Rule 3.6 and Commentary .05 herein, would not include those securities defined under Section 18(b)(1)(B) of the 1933 Act. 15 U.S.C. 77r(b)(1)(B).

ensure that its own systems and those of the Options Price Reporting Authority (''OPRA'') have the capacity to handle the potential increased capacity requirements. Also, due to recent trends in the securities markets, there has been a marked increase in the number of underlying securities that, but for the pricing standard, would otherwise qualify for options listing on the Exchange. The Exchange states that changing the pricing standard to the proposed $3.00 market price per share requirement would allow the Exchange to evaluate whether to list options on a greater number of classes without compromising investor protection.

The Exchange notes that although this proposal amends the closing market price for an underlying security which is deemed a Covered Security, as well as the time period for which it must trade at that price prior to it being listed on the Exchange, the Exchange will continue to maintain its initial listing standards. The Exchange does not propose to amend any of the other criteria in PCX Rule 3.6, including the requirements that: there must be a minimum of 7,000,000 shares of the underlying security owned by public investors; there must be a minimum of 2,000 holders of the underlying security; and, that there must be a trading volume of at least 2,400,000 shares in the preceding twelve months. Additionally, by requiring the underlying security to be listed on the New York Stock Exchange, Inc., American Stock Exchange LLC (''Amex''), or Nasdaq National Market System (''Nasdaq''),[4] the Exchange states that this would ensure that the underlying security meets the highest listing standards in the securities industry. However, if the underlying security does not qualify as a Covered Security, the $7.50 market price per share standard still will apply.

The Exchange believes that the proposed $3.00 market price per share standard is also consistent with the guideline price in the PCX Delisting Criteria Rule 3.7 which is used to determine whether an underlying security previously approved for Exchange options transactions no longer meets the requirements for the continuance of approval. Commentary .02 to PCX Rule 3.7 sets a $3 market price per share as the threshold for determining whether the Exchange may continue listing and trading options on an underlying security that was previously approved for options trading under PCX Rule 3.6. As long as a $3.00 standard is recognized as an acceptable pricing standard for options trading, albeit as a standard for continued listing, the Exchange believes that the proposed $3.00 should be the threshold standard for initial listing standards as well.

The Exchange also proposes, as a safeguard against price manipulation, that the underlying security have a closing market price of at least $3.00 per share for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation for listing and trading. The market price of such underlying security would be measured by the closing price reported in the primary market in which the underlying security is traded. The Exchange believes that a ''look back'' period of five consecutive days would provide a sufficient measure of protection from any attempts to manipulate the market price of the underlying security.

The Exchange also believes that the proposed rule change would encourage the delisting of inactive option classes, particularly those classes in which the market price of the underlying security is below $7.50. Currently, a Lead Market Maker (''LMM'') on the Exchange to whom an option class has been allocated may be reluctant to delist an inactive option class if the market price of the underlying security is below $7.50 because once delisted, the Exchange's current initial listing criteria must be met to re-list the option class, including the requirement that the market price per share of the underlying security be at least $7.50 for the majority of business days during the preceding three months. The Exchange also notes that the Commission recently granted PCX approval to list additional series on an option class even though the market price of the underlying security is below $3, provided that at least one other options exchange trades the series to be added, and at the time the other options exchange added that series, it met the requirements to add new series, including the $3 price requirement.[5]

The proposed $3 price standard and the five-day look-back period would provide a reliable test for stability and, at the same time, presents a more reasonable time period for qualifying the price of an underlying security. The Exchange further believes that this proposed abbreviated qualification period, in combination with the Exchange's existing quarterly delisting program,[6] would contribute to reducing unnecessary quote traffic.

Finally, for the purposes of consistency within the PCX Rules, the Exchange proposes to amend PCX Rule 3.6 Commentary .05 with respect to Restructure Securities. Currently, Commentary .05 provides a method to certify that the market price of a Restructure Security satisfies the pricing requirement of PCX Rule 3.6 and specifically references the $7.50 market price per share. In order to make the Rule consistent with the pricing standard change of this proposal, the amended rule would reflect that the market price standard for Restructure Securities also will be reduced from $7.50 to $3.00 as long as the Restructure Security is a Covered Security.

2. Statutory Basis

The Exchange believes that the current proposal will allow the Exchange to provide investors with those options that are most useful and demanded by them without sacrificing any investor protection. As such, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[7] in general and furthers the objectives of section 6(b)(5)[8] in particular in that it will promote just and equitable principles of trade; facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.

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.

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

No written comments were solicited or received with respect to the proposed rule change.

[4] *See* 15 U.S.C. 77r(b)(1)(A).

[5] *See* Securities Exchange Act Release No. 46406 (August 23, 2002), 67 FR 55446 (August 29, 2002) (approving SR–PCX–2002–51). The Exchange represents that these rules are consistent with similar rules regarding listing and maintenance standards of the American Stock Exchange LLC (''Amex''), International Securities Exchange, Inc. (''ISE''), Chicago Board of Options Exchange, Inc. (''CBOE'') and the Philadelphia Stock Exchange, Inc. (''Phlx''). *See* Interpretation and Policy .02 to CBOE Rule 5.4; Commentary .02 to Amex Rule 916; Commentary .02 to Phlx Rule 1010; and ISE Rule 503(c).

[6] The Exchange states that it maintains an active delisting program which requires the quarterly delisting of multiply listed option classes that do not trade more than 20 contracts per day on the Exchange.

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

[8] 15 U.S.C. 78f(b)(5).

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

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4[10] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such 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.

Under Rule 19b–4(f)(6)(iii) of the Act,[11] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has requested that the Commission waive the 30-day operative date and the five-day pre-filing notice requirement in order for it to implement the proposed rule change as quickly as possible. The Exchange contends that this proposed rule is substantially similar to comparable rules the Commission approved for the CBOE, which was published for public notice and comment.[12] As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period as well as the five-day pre-filing notice requirement,[13] and, therefore, the proposal is effective and operative upon filing with the Commission.

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–2003–06 and should be submitted by March 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4047 Filed 2–19–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (approving SR–CBOE–2002–62).

[13] For purposes only of waiving the five-day pre-filing notice requirement and the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47359; File No. SR–Phlx–2003–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Automatic Execution of Eligible Orders During Locked Markets

February 12, 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 January 21, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or the ''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 Exchange. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] 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 proposes to amend Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X),[6] to provide for the automatic execution of eligible orders during locked markets (*i.e.*, 2 bid, 2 offer). Below is the of the proposed rule change. Proposed new language is italized. Proposed deletions are in [brackets].

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a)–(b) No change.

(c) (i)—(iii) No change.

(iv) Except as otherwise provided in this Rule, in the following circumstances, an order otherwise eligible for AUTO–X will instead be manually handled by the specialist:

(A) the Exchange's disseminated market is crossed (*i.e.*, 2⅛ bid, 2 offer) [or locked (*i.e.*, 2 bid, 2 offer)], or crosses [or locks] the disseminated market of another options exchange;

(B)—(I) No change.

(d)—(j) No change.

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(6).

[5] The Phlx asked the Commission to waive the 5-day pre-filing requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Phlx Rule 1080.