

proposes to adopt this municipal securities pilot program on a permanent basis.

Under the pilot program, a municipal security may be eligible for Exchange listing provided it is rated as investment grade by at least one nationally recognized rating service, and satisfies the Exchange's distribution criteria for bonds of issuers whose corporate securities are not listed on the Exchange, *i.e.*, the size of issue must be at least \$20 million principal amount/aggregate market value, with at least 100 holders. In addition, the Exchange may consider such other information as it deems necessary to evaluate the appropriateness of the issue for exchange trading, including the financing structure and/or arrangement of the issuer.

Any municipal securities listed by the Exchange must be assigned to a specialist and traded in accordance with all PSE regulations otherwise applicable to the trading of securities listed on the Exchange. As with corporate bonds, trade reports and quotation information for municipal securities will be disseminated over Network B. However, to ensure uniformity of practice within the securities industry, proposed Rule 5.13(i) provides that all aspects of the trade reconciliation process, including comparison, settlement and clearing will be governed by the applicable requirements of the Municipal Securities Rulemaking Board ("MSRB").²

Under the pilot program, any purchase or sale of a municipal security shall be exempt from the provisions of the Exchange's off-board trading rules.³ In addition pilot program is not intended to otherwise alter the existing regulatory framework and oversight applicable to municipal securities trading.⁴ Finally, a municipal security would be subject to delisting in the event it were no longer rated as

investment grade by a nationally recognized rating service.

To accommodate the listing of municipal securities, the PSE proposes to apply the same rules and conditions of the pilot program, as noted above, on a permanent basis. In addition, the Exchange proposes to adopt the following rules on a permanent basis: Rule 3.2(e)(3) (basic listing requirements); Rule 3.5(d)(5) (maintenance requirements); Rule 5.13(i) (comparance, settlement, and clearance); and Rule 5.46(xv) (exemption to offboard trading requirements). The Exchange proposes that any municipal security that it lists be assigned to a specialist and traded in accordance with all PSE regulations otherwise applicable to the trading of securities on the Equity Floors of the Exchange.⁵ Finally, the Exchange represents that it will require that its members who trade municipal bonds listed on the Exchange will have an adequate understanding of the tax implication of the trading of such bonds.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

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

The Exchange believes the proposed rule change will impose no burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 35 days of the publication of this notice in the Federal Register or within such other 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 self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-96-16 and should be submitted by: July 30, 1996.

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

Jonathan G. Katz,
Secretary.

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[Release No. 34-37391; File No. SR-PSE-96-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Liability of the Exchange and its Governors, Officers, and Agents

July 1, 1996.

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 June 17, 1996, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule

12, 1994). The pilot program expired in November 1994.

² MSRB Rule G-3 provides specific qualification requirements for municipal securities principals and representatives. In light of the PSE's qualification requirements for specialists, the Exchange believes it is appropriate for the PSE to rely on these requirements for its specialists in lieu of the Rule G-3 standards. It is important, however, that any specialist selected by the PSE for a listed municipal security be familiar with the characteristics of municipal securities.

³ See Rule 5.46.

⁴ The National Association of Securities Dealers ("NASD") has the authority to enforce the MSRB rules. The Exchange notes that it will also be responsible for enforcing MSRB rules for the listed municipal securities. The PSE's enforcement in this regard will not preempt or limit in any manner the NASD's authority to act in this area.

⁵ To date, the Exchange has not listed or traded any municipal securities under the pilot program.

⁶ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 17 CFR 240.19b-4

change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 PSE, pursuant to Rule 19b-4 of the Act, proposes to adopt new provisions pertaining to the liability of the Exchange and to amend an existing provision. Specifically, the PSE proposes to adopt: new Rule 13.2, *Liability of Exchange*, which clarifies and broadens the existing limitations on the Exchange's liability; new Rule 13.3, *Legal Proceedings Against Exchange Governors, Officers, Employees or Agents*, which prohibits members from instituting certain types of legal proceedings against Exchange officials; and new Rule 13.4, *Exchange's Cost of Defending Legal Proceedings*, which provides for the recovery of the Exchange's defense costs in certain circumstances. In addition, the PSE proposes to amend Rule 6.59, *Liability of Exchange for Actions of Order Book Officials*, to clarify its purposes and to provide a reference to the new provisions in Rule 13.

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 self-regulatory organization 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 self-regulatory organization 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

Liability of Exchange

The principal rule concerning Exchange liability is contained in Article VI, Section 6 of the PSE Constitution. Article VI, Section 6 provides that the Exchange is not liable to members for damages arising out of the use or enjoyment of Exchange facilities in the conduct of their business.

New Rule 13.2(a)³ clarifies that, except as otherwise expressly provided in the rules of the Exchange, neither the Exchange nor its Governors, officers, committee members, employees, or agents shall be liable to members or their associated persons except where the Exchange's liability is attributable to willful misconduct, gross negligence, bad faith, fraud, or criminal acts. In addition, new Rule 13.2(a) clarifies that the limitation of the Exchange's liability includes interruption, failure or unavailability of Exchange facilities or services.

New Rule 13.2(a)⁴ also adds language which limits the Exchange's liability for errors, omissions, or delays in calculating or disseminating various kinds of data relating to current or closing index values, reports of transactions or quotations for options or other securities, and further provides that the Exchange does not warrant the results obtained by any person or entity relying on data transmitted by or on behalf of the Exchange or any designated reporting authority. New Rule 13.2(a)⁵ states that its provisions are in addition to, and do not limit, the provisions of the PSE Constitution, Article VI, Section 6. Lastly, paragraphs (b) and (c) of new Rule 13.2⁶ describe the monetary limits on the Exchange's liability with respect to the Exchange's order routing systems, electronic book, and automatic execution systems.⁷

³The PSE notes that new Rule 13.2(a) is based on Chicago Stock Exchange ("CHX") Article I, Rule 18(a) and the proposed rule changes filed by the Chicago Board Options Exchange ("CBOE") to Rule 6.7(a). See Securities Exchange Act Release No. 36863 (February 20, 1996), 61 FR 7285 (February 27, 1996) (File No. SR-CBOE-96-02).

⁴The PSE notes that this language to new Rule 13.2(a) is based on CBOE Rule 24.12

⁵The PSE notes that this aspect of new rule 13.2(a) is based on CHX Article 1, Rule 18(b).

⁶The PSE notes that new Rules 13.2(b) and (c) are based on CBOE Rules 6.7(b) and (c).

⁷Under new Rule 13.2(b), the PSE's liability with respect to the Exchange's order routing systems, electronic book, and automatic execution systems is limited to the larger of any recovery obtained by the Exchange under any applicable insurance or: (i) \$100,000 as to any claim or series of claims made by a single member on a single day; (ii) \$250,000 as to all claims by all members on any single trading day; and (iii) \$500,000 as to all claims, in the aggregate, by all members in any calendar month.

Under new Rule 13.2(c), if all of the claims arising out of the use or enjoyment of the facilities afforded by the Exchange cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided for in paragraph (b), the maximum amount will be allocated based on the proportion that each claim bears to the sum of all such claims.

Legal Proceedings Against Exchange Governors, Officers, Employees or Agents

New Rule 13.3⁸ prohibits a member or associated person from instituting a lawsuit or any other type of legal proceeding against any Governor, officer, employee, agent, or other official of the Exchange or any of its subsidiaries based on actions taken or omitted to be taken while such person is acting on Exchange business or the business of any of its subsidiaries. Rule 13.3, however, does not apply where private rights of action under the federal securities laws exist, to appeals of disciplinary actions, to other actions by the Exchange as provided for in its rules, and, with respect to the Governors of the Exchange, to the extent such action or omission is inconsistent with the Exchange's Certificate of Incorporation.

The Exchange notes that new Rule 13.3 does not prohibit a member from suing the Exchange as a result of the actions of these individuals; rather it merely prohibits suits against the person in his or her individual capacity. According to the PSE, the purpose of disallowing lawsuits or other legal proceedings against Exchange officials or agents when they are acting on Exchange business is to eliminate the potential exposure to personal liability of such persons which impairs their ability to perform their duties.

Exchange's Costs of Defending Legal Proceedings

New Rule 13.4⁹ requires a member or associated person who fails to prevail in a legal proceeding instituted by that person against the Exchange or other specified persons, and related to the business of the Exchange, to pay to the Exchange all reasonable expenses, including attorney's fees, incurred by the Exchange in its defense of such proceeding. The requirement would apply only where the costs exceed fifty thousand dollars (\$50,000).

According to the PSE, this provision is intended to discourage unfounded, vexatious litigation against the Exchange where the Exchange's costs are significant, without having an undue chilling effect on legitimate claims of members. The proposed rule would

⁸The PSE notes that new Rule 13.3 is based on CHX Article I, Rule 17 and the proposed rule changes filed by the CBOE to Rule 6.7A. See Securities Exchange Act Release No. 36863, *supra* note 3.

⁹The PSE notes that new Rule 13.4 is based on CHX Article 1, Rule 18(c) and the proposed rule changes filed by the CBOE to Rule 2.24. See Securities Exchange Act Release No. 36863, *supra* note 3.

apply to lawsuits or other legal proceedings that might be instituted by members against the Exchange or to any of its Governors, officers, committee members, employees, or agents. This provision, however, would not apply to disciplinary actions, to administrative appeals of Exchange actions, or to any specific instance where the Board of Governors has granted a waiver of this rule.

Liability of Exchange for Actions of Order Book Officials

Current Rule 6.59(a) and (g) are being amended for clarification purposes.¹⁰ Rule 6.59 is also adding a reference to the new provisions in Rule 13.

2. Statutory Basis

The PSE believes that the proposed rule changes are consistent with Section 6(b)(5) of the Act in that, by limiting the liability of the Exchange and its Governors, officers, employees, and agents, by precluding certain types of legal actions by members against such persons individually, and by discouraging frivolous lawsuits against the Exchange, it will reduce the costs of the Exchange in responding to claims and lawsuits, thereby permitting the resources of the Exchange to be better utilized for promoting just and equitable principles of trade and for protecting investors and the public interest.

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

The self-regulatory organization does not believe that the proposed rule change will impose any inappropriate 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.

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

Within 35 days of the 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 self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-96-21 and should be submitted by July 30, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Jonathan G. Katz,

Secretary.

[FR Doc. 96-17448 Filed 7-8-96; 8:45 am]

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[Release No. 34-37389; File No. SR-Phlx-96-15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to an Amendment to the PHLX's Schedule of Fees and Charges

July 1, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 24, 1996 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 self-regulatory organization. On June 24,

1996, the PHLX filed Amendment No. 1 to its proposal.² 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 Rule 19b-4 of the Act, submits a proposed rule change amending the PHLX's Schedule of Fees and Charges respecting the charges for non-exchange sponsored securities execution equipment³ operated by the PHLX members on the PHLX equity floor. The proposal would rescind the existing monthly fee of \$250.00 assessed each member or member organization for each non-exchange sponsored securities execution machine operated by the member or member organization on the PHLX equity trading floor as well as the credits previously offered against such fees, and substitutes a securities execution equipment registration fee of \$300.00 per machine for the period July 1, 1996 through December 31, 1996.⁴ Deletions are in brackets:

Membership Dues or Foreign Currency User Fees*—\$1,000.00 semiannually.

Application Fee—\$200.00.

Initiation Fee—Members, Participants, and Approved Lessors—\$1500.00.

Transfer Fee—\$300.00.

² In Amendment No. 1, the PHLX deleted language that the fee imposed on PHLX members or member organizations for non-exchange sponsored securities execution equipment used on the PHLX equity trading floor conforms to the fee charged for such equipment used on the equity options trading floor; clarified that trades previously counted towards eligibility for credits against the previously imposed monthly charges for securities execution equipment need not have been cleared through SCCP to have qualified for the credit, only executed on the PHLX; and clarified that PHLX members or member organizations will be assessed \$300.00 for the period July 1, 1996 through December 31, 1996 for each non-exchange sponsored securities execution machine operated on the PHLX equity trading floor. See Letter from Murray L. Ross, Vice President and Secretary, PHLX, to George A. Villasana, Attorney, Division of Market Regulation, SEC, dated June 21, 1996.

³ Securities execution equipment refers to machines that route order flow to other marketplaces, such as Designated Order Turnaround ("DOT") machines, Instinet terminals, and other computers configured for securities execution and order delivery capabilities.

⁴ See Amendment No. 1, *supra* note 2.

According to the Exchange, its Board of Governors has not yet determined the amount of fees to be charged for such equipment after December 31, 1996. Telephone conversation on June 19, 1996 between Murray L. Ross, Vice President and Secretary, PHLX, and George A. Villasana, Attorney, Division of Market Regulation, SEC.

* An exemption from foreign currency user fees is extended to PHLX members also holding title to a foreign currency options participation.

¹⁰ The PSE notes that the amendments are based on CBOE Rules 7.11(b)(1) and 7.11(e), respectively.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).