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 self-regulatory organization 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.

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. 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 in Washington, DC. 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–NYSE–99–22 and should be submitted by August 4, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17933 Filed 7–13–99; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41595; File No. SR–PCX–98–02]

Self-Regulatory Organizations; The Pacific Exchange, Inc.; Order Approving Proposed Rule Change To Allow Staffing of the Public Limit Order Book by Employees of the LMM

July 2, 1999.

I. Introduction

On January 23, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand its Lead Market Maker (''LMM'') Book Program (''Program'') to allow qualified LMMs to manage their own employees in operating the options public limit order book (''Book''). The proposed rule change was published for comments[3] in the **Federal Register** on April 22, 1998.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.[5]

II. Description of the Proposal

On October 11, 1996, the Commission approved an Exchange proposal to adopt a one-year pilot program under which a limited number of LMMs would be able to assume operational responsibility for the options public limit order book in certain option issues.[6] Initially, the Program's participation was limited to three LMMs and 40 option symbols.[7] On April 1, 1997, the Commission approved an Exchange proposal to expand the Program limits to nine LMMs and 150 option symbols.[8] On September 22, 1997, the Commission approved an Exchange proposal to extend the pilot program for an additional year.[9] Subsequently, the Commission approved an Exchange proposal to make the Program permanent.[10]

Under the Program,[11] approved LMMs may manage the Book function with the assistance of Exchange personnel, take responsibility for trading disputes and errors, set rates for Book execution, and pay the Exchange a fee for systems and services.[12] Presently, an LMM must be certified as qualified by the Exchange's Options Floor Trading Committee (''OFTC'') before an employee of that LMM may assist with Book operation. Certification of an LMM is based on some or all of the following factors: experience with trading an options issue as a market maker or LMM and willingness to assume LMM responsibilities; trading volume of the options issue(s); adequacy of capital; willingness to promote the Exchange as a marketplace; history of adherence to Exchange rules and securities laws; trading crowd/LMM evaluations conducted pursuant to Options Floor Procedure Advice B–13; and ability to manage the Book operation.[13]

The Exchange now proposes to expand the Program to allow qualified LMMs to manage their own employees in operating the Book. Currently, the Exchange required participating LMMs to use Exchange personnel to assist the LMM in performing the Order Book Official (''OBO'') function, for which the Exchange charges the LMM a staffing charge.[14] LMMs who opt to manage their own employees in the Book operation would continue to set their own rates for Book executions, and would only be required to use Exchange staff, and pay a staffing charge, under

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

[2] 17 CFR 240.19b–4.

[3] On April 13, 1998, the PCX submitted a letter, in response to Commission staff questions, providing a brief explanation of its proposed method for admitting employees to participate in the LMM Program and concerning its proposed surveillance of the LMM Program employees and operations. The substance of this letter is incorporated into this order. *See* Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Marie D'Aguanno Ito, Special Counsel, Division of Market Regulation (''Division''), Commission, dated April 13, 1998 (''PCX Letter No. 1'').

[4] Securities Exchange Act Release No. 39875 (April 15, 1998), 63 FR 19994.

[5] On March 15, 1999, the PCX submitted a letter further explaining the supervision and training of LMM-employed Order Book Officials. The letter also clarifies that for purposes of the proposed rule change LMMs operating the Book will assume the duties and liabilities of the Exchange. The substance of this letter is incorporated into this order. *See* letter from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, to Richard Strasser, Assistant Director, Division, Commission, dated February 10, 1999 (''PCX Letter No. 2'').

[6] *See* Exchange Act Release No. 37810 (October 11, 1996), 61 FR 54481 (October 18, 1996) (approving File No. SR–PSE–96–09).

[7] *Id.*

[8] *See* Exchange Act Release No. 38462 (April 1, 1997), 62 FR 16886 (April 8, 1997).

[9] *See* Exchange Act Release No. 39106 (September 22, 1997), 62 FR 51172 (September 30, 1997).

[10] *See* Exchange Act Release No. 40548 (October 14, 1998), 63 FR 56283 (October 21, 1998).

[11] Only multiple-listed option issues are currently eligible to be traded unde the Program. *See* Exchange Act Release No. 38273 (February 12, 1997), 62 FR 7489 (February 19, 1997).

[12] *See* Exchange Act Release No. 37874 (October 28, 1996), 61 FR 56597 (November 1, 1996) (approving SR–PSE–96–38, establishing a staffing charge for LMMs who participate in the pilot program).

[13] *See* Exchange Act Release No. 37810, note 6, *supra.*

[14] *Id. Also see* PCX Rule 6.82(h)(1)(a).

unusual circumstances.[15] If an LMM is not currently participating in the Program and wished to use its own employees to staff the Book, that LMM would apply to the OFTC for approval. An LMM currently participating in the Program wishing to begin using its own employees to staff the Book would also need to apply to the OFTC for approval.

Under the proposal, employees of qualified LMMs operating the Book will be required to perform OBO functions, pursuant to PCX Rules 6.51 through 6.59, as if they were Exchange employees. Like OBOs who are Exchange employees, the LMM staff handling the OBO functions will have the duty to: (1) Assist in the maintenance of a fair, orderly and competitive market; [16] (2) report any unusual activity, transactions or price changes or other unusual market conditions or circumstances that are detrimental to the maintenance of a fair, orderly and competitive market to an Options Floor Official; [17] and (3) disclose to members, upon request, the price and number of contracts that are bid below or that are offered above the Book information displayed.[18] The Exchange has represented that the LMM employees who will most likely operate the Book initially will be former Exchange OBOs and LMM employees who presently work with Exchange OBOs in apprentice-like fashion.[19] For the purposes of this proposal, LMMs will assume the liabilities of the Exchange under PCX Rules 6.59(a) and 13 for any loss, expense, damage or claim arising out of errors or omissions of their Book staff.[20]

The Exchange believes that allowing LMMs to use their own employees to operate the Book will have no negative impact on the Exchange's oversight and regulation of activities on the Options Trading Floor. LMMs who operate the Book will continue to be subject to higher capital requirements than other LMMs or Market Makers.[21] The Exchange will continue to employ Exchange staff to monitor the operations of all LMMs.[22] Exchange staff will also continue to prepare all Unusual Activity Reports that are forwarded to the Surveillance Department for review and to monitor the activities of LMMs, including those activities that are brought to the attention of Floor Officials by members of the trading crowd.[23] Finally, in addition to the on-site monitoring, Exchange staff will also use automated reports for the LMM Limit Order Book and Opening Price Surveillance to help ensure that the LMM is meeting its duties regarding the Book.[24]

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act [25] and, in particular, with Section 6(b) of the Act.[26] Specifically, the Commission finds that the proposal is consistent with the Section 6(b)(5) [27] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

The Commission believes that the proposal is reasonably designed to maintain, without disruption to activities on the Exchange's Options Trading Floor, the effective operation of the Book. Under the proposal, LMMs must be certified as Program qualified by the Exchange's OFTC based on a number of factors, including the LMM's ability to manage the Book operation. Additionally, the employees of qualified LMMs operating the Book will be required to perform OBO functions, pursuant to PCX Rules 6.51 through 6.59, as if they were Exchange employees. Like OBOs who are Exchange employees, the LMM staff handling the OBO functions will have the duty to, amongst other things: (1) Assist in the maintenance of a fair, orderly and competitive market; and (2) report any unusual activity, transactions or price changes or other unusual market conditions or circumstances that are detrimental to the maintenance of a fair, orderly and competitive market to an Options Floor Official. The LMM will be responsible for the proper execution of OBO functions by their employees, and for the purposes of this proposal, the LMMs will assume the liabilities of the Exchange under PCX Rules 6.59(a) and 13 for any loss, expense, damage or claim arising out of errors or omissions of their Book staff. Thus, all the OBO functions that are currently administered by Exchange employees should continue to be executed by LMM employees under the proposal.

The Commission also believes that the Exchange's proposal is reasonably designed to provide LMM-employed OBOs with adequate supervision. The Exchange has represented that LMMs who operate the Book will be subject to heightened scrutiny as compared to LMMs who do not operate the Book. The Exchange also represents that Floor Officials will continue to supervise the LMM trading crowds to which they are assigned. As a result, members seeking information or wishing to file a complaint may go to a Floor Official or Exchange Floor managers. Additionally, LMMs who undertake the operation of the Book under the proposal will continue to be subject to higher capital requirements than other LMMs or Market Makers; Exchange staff will continue to prepare all Unusual Activity Reports that are forwarded to the Surveillance Department for review; and Floor Officials will continue to monitor the activities of LMMs, including those activities that are brought to the attention of Floor Officials by members of the trading crowd.

The Commission believes that the Exchange's proposal is reasonably designed to provide for the adequate training of LMM employees operating the Book. The Exchange has represented that initially, the LMM employees who will most likely operate the Book will be former Exchange OBOs or present LMM employees who currently work with Exchange OBOs in apprentice-like fashion in the Program. Additionally, the Exchange has stated its willingness to assist LMM training efforts with their staff and facilities although participating LMMs will retain the primary responsibility to ensure the adequate training of their Book staff. The Commission believes that the structure of the Program, along with the supervision and oversight by the LMMs and Exchange, should help to ensure that LMM-employed OBOs are adequately trained.

The Commission also believes that the proposal should help LMMs control their operational costs, as LMMs using their own staff to administer book functions will no longer have to pay Exchange personnel staffing charges, except during unusual market

[15] In the event of unusual market circumstances, the Exchange will make Exchange staff available to assist the LMMs in performing their CBO functions on a temporary basis, and will charge such LMMs a reasonable fee for such services. The Exchange intends to file with the Commission a proposed rule change to establish temporary staffing charges for LMMs.

[16] *See* PCX Rule 6.53.

[17] *See* PCX Rule 6.54.

[18] *See* PCX Rules 6.55 and 6.57.

[19] *See* PCX Letter No. 2, note 5, *supra.*

[20] *Id.*

[21] *See* PCX Rule 6.82, Commentary .05 (requiring LMMs who run the Book to maintain ''minimum net capital,'' as provided in Exchange Act Rule 15c3–1, and also to maintain a cash or liquid asset position of at least $500,000, plus $25,000 for each issue over 5 issues for which they perform the function of an OBO).

[22] *See* PCX Letter No. 2, note 5, *supra.*

[23] *Id.*

[24] *Id.*

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

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

circumstances. Additionally, the proposal should reduce Exchange costs associated with providing staff to operate the Book.[28] By permitting the Exchange to reduce Program costs and allocate its resources to other regulatory areas the Commission finds that the proposal is consistent with the Act. The Commission believes that the proposal is reasonably designed to maintain, without disruption to activities on the Exchange's Options Trading Floor, the effective operation of the Book functions and therefore is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change, as amended, (SR–PCX–98–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17885 Filed 7–13–99–; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41600; File No. SR–Phlx–99–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Participation on the Auto-X Wheel

July 6, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is heregy given that on June 21, 1999, 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, II, and III below, which Items have been prepared by the Exchange.[3] 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 modify Options Floor Procedure Advice (''Advice'') F–24, Auto-X, Contra-Party Participation (The Wheel) to allow Registered Options Traders (''ROTs'') to only sign-on the Wheel in one Wheel assignment area (two contiguous quarter turrets) during an expiration month, unless the ROT is replacing another ROT from the same firm. The Exchange also proposes to delete references to ''brief interval'' in Advice F–24(c)(iii), to begin requiring ROTs to sign-off the Wheel if they leave the Wheel assignment area for any period of time. 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 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 IV below. The Exchange has prepared summeries, 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

The Wheel is an automated mechanism for assigning trade participation among specialists and ROTs on a rotating basis, as contra-side participants to Auto-X orders. Auto-X is the automatic execution feature of the Exchange's Automated Options Market (''AUTOM'') system,[4] which provides customers with automatic executions of eligible option orders at displayed markets. The purposes of the Wheel is to increase the efficiency of order execution through Auto-X by including floor traders in the automated assignment of contra-parties to incoming Auto-X orders. Thus, the Wheel is intended to make Auto-X more efficient, as contra-side participation is assigned automatically, and no longer entered manually.

Currently, an ROT may sign-on to as many Wheels as that ROT maintains an ROT assignment, as long as the ROT is present in Wheel assignment area and actively making markets. However, pursuant to Advice F–24(c)(i), the ROT may not sign-on in more than one Wheel assignment area (two contiguous quarter turrets) at a given time. The Exchange proposes that an ROT only sign-on the Wheel in one Wheel assignment area per expiration month at any given time. For example, if an ROT signs-on following the June expiration in Wheel assignment area X, the ROT may sign-on or off the Wheel in Wheel assignment area X during that expiration month (*i.e.,* July). The ROT may not sign-on to the Wheel in Wheel assignment area Y until after the July expiration. The Exchange believes that placing this restriction will encourage ROTs to better fulfill their market making obligations in the trading crowd as well as receive the benefits of participation on the Wheel. In addition, the Exchange recognizes the need for flexibility within member firms to replace ROTs in different trading crowds on a temporary basis. Thus, the Exchange proposes that an ROT who replaces another ROT from the same firm on a temporary basis would be able to sign-on the Wheel for the duration of his replacement.[5]

Secondly, an ROT must currently sign-off the Wheel if he leaves the trading crowd for more than a ''brief interval.'' A brief interval is defined as five minutes or less or in matters of dispute, the amount of time that it takes to call a Floor Official and inform him/her of the issue at hand.[6] The Exchange proposes to delete the reference to ''brief interval'' from section (c)(iii) of Advice F–24, thus requiring ROTs to sign-off the Wheel if they leave the trading crowd for any period of time. The Exchange believes that this proposal will clarify the ROTs' responsibilities regarding sing-on/sign-off procedures on the Wheel and facilitate the administration of fines by eliminating the subjectivity as to the time period.

For these reasons, the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent

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[28] Telephone conversation between Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX and Marc McKayle, Attorney, Division, Commission on June 23, 1999.

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The Exchange provided the Commission with written notice and the text of the proposed rule change on June 10, 1999 pursuant to Rule 19b–4(f)(6)(iii).

[4] AUTOM is an electronic order routing and delivery system for option orders. *See* Phlx Rule 1080.

[5] The replacement ROT must maintain an assignment in the issue where he is acting as the replacement consistent with his obligations as a market maker pursuant to Phlx Rule 1014.

[6] *See* Securities Exchange Act Release No. 38881 (July 28, 1997) 62 FR 41986 (August 4, 1997) (SR–Phlx–97–21).