

will begin offering its New York Window Services on July 13, 1998.⁵

II. Discussion

Section 17A(b)(3)(F) of the Act⁶ requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule changes are consistent with DTC's and NSCC's obligations under Section 17A(b)(3)(F). The Commission believes that the arrangements between DTC and NSCC should ensure that securities transactions that are currently processed through Direct Clearing and the Window will be processed efficiently through DTC's New York Window Services. In addition, the Commission believes that DTC's procedures for its New York Window services, which are similar to those the Commission previously approved for NSCC, should assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposals are consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-DTC-98-09 and SR-NSCC-98-05) be and hereby are approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40182; File No. SR-PCX-98-12]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Treatment of PMP Orders Generated Through the Matching of Profiles by the PCX Application of the OptiMark System

July 9, 1998.

I. Introduction

On March 2, 1998, the Pacific Exchange ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")¹ and Rule 19b-4 thereunder,² to amend its interpretation of Rule 5.32(a) "PMP-Only" of its Rules of Board of Governors so that it will clarify how PMP orders will be treated when generated from the matching of Profiles through the PCX Application of the OptiMark System ("PCX Application").³

Notice of the proposed rule change was published in the **Federal Register**.⁴ The Commission received no comment letters in response to the notice of the proposed rule change.

II. Description of the Proposal

PCX has proposed to amend its interpretation of Rule 5.32(a) "PMP-Only" of its Rules of Board of Governors so that it will clarify how PMP orders will be treated when generated from the matching of Profiles through the PCX Application. A new commentary has been added to Rule 5.32(a).

PCX will modify the interpretation of its Rule 5.32(a) so that executions resulting from the operation of the PCX Application would be considered as a part of the "primary market" for the purposes of execution of orders marked "PMP." The purpose of the proposed interpretation of the rule is to respond to the SEC staff's request to clarify the meaning of Rule 5.32(a) "PMP Only." Through the addition of proposed Commentary .01, Rule 5.32(a) would be interpreted as meaning that during regular "primary" market trading hours,

an order specifically marked "PMP" would receive primary market protection, which would include not only the traditional primary markets (e.g., New York markets) but also matches resulting from the PCX Application. Accordingly, executions resulting from the PCX Application may trigger the execution of an order marked "PMP Only," even if the primary markets have not traded at that price. Similarly, a PMP order reflected into the PCX Application as a Profile, which is matched in the PCX Application and results in an execution, would require that such PMP limit order be filled, even if the price is out of range from an otherwise existing "primary" market, however defined. This would then be consistent with the overall premise that under no circumstance can a specialist accept an execution arising out of orders generated from a cycle of the PCX Application, without also executing any eligible booked orders that were put in the book before the cycle began.

III. Discussion

The Commission believes that proposed rule change is consistent with the provisions of Section 6(b)(5) of the Exchange Act, which provides, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission believes that by including PMP orders in the PCX Application, and giving those orders not only traditional primary market protection, but also the potentially improved pricing that may result from inclusion in the PCX Application, the PCX is seeking to protect the interests of investors and to promote just and equitable principles of trade, while striving to prevent unfair discrimination between customers, brokers, and dealers. This effort should also help to remove impediments to, and perfect the mechanism of, a free and open market, consistent with the purpose of Section 6(b)(5) of the Act.

In addition, the Commission believes that the proposed rule change is consistent with the provisions of Section 11A(a)(1)(B) of the Exchange Act, which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations. By employing the facility of the PCX Application, an advanced data processing and communications system, to process PMP orders and to give potentially improved pricing to those orders or otherwise to fill more

⁵ Conversation between Jeffrey T. Waddle, Associate Counsel, DTC, and Theodore R. Lazo, Attorney-Adviser, Division of Market Regulation, Commission (June 17, 1998).

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1982).

² 17 CFR 240.19b-4 (1991).

³ For a description of the PCX Application of the OptiMark System, see Securities Exchange Act Release No. 39086 (Sept. 17, 1997), 62 FR 50036 (Sept. 24, 1997) (Commission order granting approval for the PCX Application).

⁴ Securities Exchange Act Release No. 39818 (Mar. 30, 1998), 63 FR 17252 (Apr. 8, 1998).

expeditiously PMP limit orders, the PCX is furthering the purposes of Section 11A(a)(1)(B) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵ that the proposed rule change (SR-PCX-98-12) is approved.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40180; File No. SR-Phlx-98-22]

July 8, 1998.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., and Amendment No. 1 Thereto Relating to Amendments to Phlx Rule 931 Regarding Approved Lessors

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 May 18, 1998, 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 Phlx. On June 8, 1998, the Phlx filed an amendment to the proposal.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

The Phlx seeks to amend Phlx Rule 931, "Approved Lessor." The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, the Phlx 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 Phlx 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

The Phlx proposes to amend Phlx Rule 931 to substitute the word "Exchange" for the word "Corporation" throughout the rule and to require disclosure on an initial and periodic (quarterly) basis of lists of limited partners, limited liability organization members and shareholders of corporate entities of approved lessors. Phlx Rule 931(d), as amended, will require a lessor who is a natural person to file with the Exchange an attestation in a form prescribed by the Exchange as to the source of funds used to purchase the membership in addition to a completed Form U-4. For a lessor who is not a natural person, Phlx Rule 931(d) will require that a statement of assets, liabilities and net work and (1) if a partnership, an executed partnership agreement along with executed Form U-4 for all partners who are natural persons; (2) if a limited liability entity other than a corporation, an executed copy of the operating agreement along with accompanying Form U-4 for all such members who are natural persons; or (3) if a corporation, the corporate articles of incorporation, corporate by-laws, a listing of all officers, directors and shareholders along with accompanying Form U-4s. For a lessor who is not a natural person, Phlx Rule 931(e) will require periodic reports to be submitted to the Exchange within seventeen business days after the conclusion of the reporting period, in a form prescribed by the Exchange,

including but not limited to the following information: (i) As of the last business day of each calendar quarter, a list of all limited partners if the lessor is a limited partnership, a membership list if the lessor is a limited liability entity other than a corporation along with any new subscription agreements and shareholder list if the lessor is a corporation, and (ii) any material change in the corporate or organizations structure within ten days of the change in the structure.

According to the Phlx, the proposed amended rule codifies existing practices of the Exchange's Office of the Secretary and Examinations Department respecting processing of applications for approval as an approved lessor of the Phlx. The proposal will allow the Exchange to monitor any changes in the ownership interest respecting the membership or memberships held by approved lessors. The proposal will also allow the Exchange to monitor for any potential statutory disqualifications respecting shareholders, partners and members of limited liability entities by requiring the filing of Form U-4 and amendments to Form U-4 for natural persons as well as various corporate, organizational agreements or partnership interest disclosures for other entities.

The Phlx believes that the proposed rule change is consistent with Section 6 of the Act,⁴ in general, and Section 6(b)(5),⁵ in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, 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 and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

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

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Murray L. Ross, Esq., Vice President and Secretary, Phlx, to Michael Walinskas, Esq., Deputy Associate Director, Division of Market Regulation, Commission, dated June 6, 1998 ("Amendment No. 1"). In Amendment No. 1, the Phlx consents to have the proposed rule change published for notice and comment and treated pursuant to Section 19(b)(2) of the Act. In addition, in Amendment No. 1 the Phlx proposes to adopt Commentary .01 to Phlx Rule 931 which will require approved lessors to update Form U-4, submitted pursuant to Phlx Rule 931(d), within thirty days of learning that the information contained in Form U-4 has become incomplete or inaccurate. Where an amendment to Form U-4 involves a statutory disqualification as defined in Sections 3(a)(39) and 15(b)(4) of the Act, Commentary .01 will require that the amended Form U-4 be submitted not later than ten (10) days after the statutory disqualification occurs.