

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.

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

Nasdaq does not believe that the proposed rule change will result in 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 were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> At any time within 60 days of the filing of the 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.

Nasdaq has requested that the operative date be accelerated, and that the Commission waive the requirement that it provide written notice of its intent to file the proposed rule change more than five business days prior to the date of filing of the proposed rule change.

The Commission finds that it is appropriate to designate the proposal to become operative today because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date of the proposed rule change will allow NASD members additional time to convert their internal automated system to comply with the imposition of new 90-second trade reporting obligations

between the hours of 5:15 p.m. and 6:30 p.m. Eastern Time, and to make uniform the start date 90-second trade reporting. For these reasons, the Commission finds good cause to waive the requirement that Nasdaq provide written notice of its intent to file the proposed rule change prior to the date of filing the proposal, and to designate that the proposal become operative today.<sup>14</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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 NASD. All submissions should refer to file number SR-NASD-99-64 and should be submitted November 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-42051; File No. SR-PCX-99-35]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. To Increase Lead Market Maker Concentration Levels From 10% to 15%**

October 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>14</sup> In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. <sup>15</sup> U.S.C. 87c(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

("Exchange Act" or "Act"),<sup>1</sup> notice is hereby given that on September 15, 1999, 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 PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change**

Currently, PCX Rule 6.82(e)(3) states that in the absence of extraordinary circumstances, as determined by the PCX's Options Allocation Committee, no Lead Market maker ("LMM") may be allocated more than 10% of the number of issues traded on the options floor. The PCX proposes to amend PCX Rule 6.82(e)(3) to increase the percentage of issues that the Options Allocation Committee may allocate to an LMM from 10% to 15% of the number of issues traded on the options floor. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are *bracketed*.

\* \* \* \* \*

#### **Rule 6.82**

(a)-(d)—No Change.

(e)(1)-(2)—No Change.

(3) Concentration of Issues. In the absence of extraordinary circumstances, as determined by the Options Allocation Committee, no LMM may be allocated more than [10%] *fifteen percent (15%)* of the number of issues traded on the Options Floor.

(e)(4)—No Change.

(f)-(h)—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 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 PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Currently, PCX rule 6.82(e)(3) states that in the absence of extraordinary circumstances, as determined by the Options Allocation Committee, no LMM may be allocated more than 10% of the number of issues traded on the options floor. The Exchange proposes to amend PCX Rule 6.82(e)(3) to increase the percentage of issues that the Options Allocation Committee may allocate to an LMM from 10% to 15% of the number of issues traded on the options floor.

The Exchange proposes this change for several reasons. First, the Exchange recently filed with the Commission a proposed rule change which the Exchange anticipates will reduce the total number of issues traded on the options floor.<sup>2</sup> The Exchange believes that the Continued Listing Fee will cause a significant number of issues to be delisted, thus lowering the total number of issues that an LMM may hold.<sup>3</sup>

Second, the Exchange believes that it is necessary in today's competitive environment to provide flexibility to LMMs to allow them to be allocated additional issues. The Exchange proposes this change to allow its LMMs to be on equal footing with specialists and Designated Primary Market Makers ("DPMs") on other options exchanges with respect to the number of issues that may be allocated to them.<sup>4</sup> The

Exchange believes that the current 10% cap is unnecessarily low and that an increase in concentration levels is consistent with rules and guidelines of other options exchanges.

2. Statutory Basis

The PCX believes that proposed rule change is consistent with Section 6(b)<sup>5</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> in particular, because it is designed to facilitate transactions in securities, perfect the mechanism of a free and open market and a national market system, and to 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 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 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 reason 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, including whether the proposed rule

options classes allocated to a DPM if the DPM meets two of the following three criteria: (1) the number of classes allocated to the DPM is 25% or more of the total number of classes traded on the CBOE (excluding DJX, NDX, OEX, and SPX); (2) the volume in the classes allocated to the DPM is 25% or more of the total volume of CBOE (excluding DJX, NDX, OEX, and SPX); and (3) the number of appointments held by the DPM is 25% or more of the total number of DPM appointments effective on CBOE.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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, N.W., Washington, D.C. 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 also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-99-35 and should be submitted by November 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-42058; File No. SR-Phlx-99-43]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Assessment of a Capital Funding Fee**

October 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 1, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>2</sup> See File No. SR-PCX-99-32. The proposal establishes a Continued Listing Fee that is designed to more fairly allocate the costs and expenses involved in supporting the trading of all listed options and to eliminate unfair burdens on options issues that generate revenue above the threshold of \$500 per month. Under the proposal, the PCX will calculate all volume-based, trading-related revenues generated by each option issue over a trailing average of three calendar months to determine whether an option issue meets the \$500 threshold. The PCX will assess a Continued Listing Fee on each option issue that fails to produce revenue of more than \$500 per month through a combined total of transaction, comparison and data entry fees over the trailing average of three calendar months. The proposal is pending with the Commission.

<sup>3</sup> For example, if the Exchange lists 800 issues, then under current PCX rule 6.82(e)(3) an LMM may be allocated up to 80 (10% of 800) of those issues. If the Exchange delists 200 of those issues, leaving a total of 600 issues listed on the Exchange, then an LMM may be allocated up to 60 issues (10% of 600).

<sup>4</sup> In this regard, the PCX represents that it is not aware of any limitations under American Stock Exchange ("Amex") rules in the number of issues in which an Amex specialist may be registered. In addition, the PCX notes that Chicago Board Options Exchange ("CBOE") Regulatory Circular RG99-135 states that CBOE's Modified Trading System Appointment Committee will review the number of