

as the Commission may designate up to ninety 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 OCC 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 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-99-16 and should be submitted by April 19, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42557; File No. SR-PCX-98-30]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments 2 and 3 to the Proposed Rule Change Relating to Telephone Use on the Options Floor

March 21, 2000.

I. Introduction

On June 26, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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 codify the Exchange's procedures and restrictions regarding telephone use on the Options Trading Floor. On November 12, 1998, the Exchange filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, including Amendment No. 1 was published for comment in the **Federal Register** on February 6, 1999.⁴ On August 4, 1999 and September 27, 1999, respectively, the Exchange filed Amendments 2⁵ and 3⁶ to the proposed rule change. No comments were received on the proposal. This order approves the proposal as amended.

II. Description of the Proposal

The purpose of this proposal is to establish rules and procedures for telephone use on the Options Floor. Proposed Rule 6.2(h) sets guidelines for the use of telephones by market makers,

Lead Market Makers ("LMMs"), floor brokers, clerks, and floor managers.

The PCX is proposing to establish a formal rule requiring that Members and Member Firms must register, prior to use, any new telephone to be used on the Options Floor. Proposed Rule 6.2(h)(1) states that each phone registered with the Exchange must be registered by category of user (market maker, LMM, floor broker, clerk, or manager). If there is a change in the category of any user, the phone must be re-registered with the Exchange. At the time of registration, Members and Member Firm representatives must sign a statement indicating that they are aware of and understand the rules governing the use of telephones on the Options Floor.

The proposed Rule further states that no Member or Member Firm may employ any alternative communication device, including but not limited to e-mail, on the Options Floor without the prior approval of the Options Floor Trading Committee.

Capacity and Functionality

Proposed Rule 6.2(h)(2) specifies the capacity and functionality permitted for the use of telephones on the Options Floor. The Rule states specifically that no wireless telephone used on the Options Floor may have an output greater than one watt and that no person on the Options Floor may use any device for the purpose of maintaining an open line of continuous communication whereby a person not located in the trading crowd may continuously monitor the activities in the trading crowd. This prohibition covers intercoms, walkie-talkies and any similar devices. The Rule does not permit speed-dialing features for Member phones.

The proposed Rule states specific guidelines for each category of user on the Options Floor, as follows:

Market Makers and LMMs

Proposed Rule 6.2(h)(3) states that market makers and LMMs may use their own cellular and cordless phones to place calls to any person at any location (whether on or off the Options Floor). The Rule also states that market makers and LMMs may use the pit rep and LMM telephones located at the trading posts only for the purpose of marketing option issues, responding to customer inquiries, or otherwise conducting Exchange business. No person other than a pit rep, market maker⁷ or an LMM may use the pit rep or LMM phones. This is to ensure that phones

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Robert Pacileo, Staff Attorney, Regulatory Policy, PCX, to David Sieradzki, Attorney, Division of Market Regulation, SEC, dated November 10, 1998 ("Amendment No. 1"). The substance of Amendment No. 1 is incorporated into this order.

⁴ Securities Exchange Act Release No. 41018 (February 3, 1999), 64 FR 7681.

⁵ See letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to David Sieradzki, Special Counsel, Division of Market Regulation, SEC, dated August 3, 1999 ("Amendment No. 2"). In Amendment No. 2, the Exchange clarifies that subsections (d)-(g) of Rule 6.2 are reserved for future use.

⁶ See letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to David Sieradzki, Special Counsel, Division of Market Regulation, SEC, dated September 24, 1999 ("Amendment No. 3"). In Amendment No. 3, the Exchange amends Rule 6.2(h)(6) to indicate that floor managers may not use the pit rep or LMM phones.

⁷ See Amendment No. 1, *supra* note 3.

⁸ 17 CFR 200.30-3(a)(12).

will be accessible for customer inquiries and marketing.

Proposed Rule 6.2(h)(3)(C) states that market makers located off the Options Floor may not place an order by calling a floor broker who is present in a trading crowd. Market makers located off the Options Floor may not otherwise place an order by calling the pit rep or LMM phone in the trading crowd. Proposed Rule 6.2(h)(3)(C) also states that any telephonic order entered from off the Options Floor must be placed with a person located in a member firm booth. According to the PCX, the purpose of this restriction is to facilitate adequate surveillance of telephonic orders and ensure that there is a record of the order in the event that a problem arises in connection with the order. The PCX also noted that the prohibition is consistent with Rule 6.85, Commentary .03, which requires verbal orders from market makers to be written up outside of the trading crowd.⁸

Floor Brokers

Proposed Rule 6.2(h)(4)(A) states that floor brokers may use cellular and cordless phones, but only to communicate with persons located on the Options Floor. These phones may not include a call forwarding feature. According to the PCX, this portion of the proposed Rule codifies long-standing PCX policies regarding phone use by floor brokers, which are designed to ensure that orders are entered in a manner that allows for routine monitoring and surveillance by the Exchange. In addition, the Rule states that floor brokers are permitted to use headsets to communicate with persons located on the Options Floor, but if the Exchange determines that a floor broker is maintaining a continuous open line through the use of a headset, the floor broker will be prohibited from future use of any headset for a length of time to be determined by the Exchange.⁹

Proposed Rule 6.2(h)(4)(B) provides that floor brokers may receive orders over their phones from any persons located on the Options Floor. Floor brokers who receive telephonic orders while in the trading crowd must step outside of the crowd, write up an order ticket and time stamp it before

representing the order in the crowd. This is consistent with Rule 6.67(a) which requires orders to be in written form when taken to the trading post for attempted execution.¹⁰

Proposed Rule 6.2(h)(4)(B) further provides that any telephonic order entered from off the Options Floor must be placed with a person located in a member firm booth. Proposed Rule 6.2(h)(4)(C) also prohibits the floor brokers from using the Pit Rep or LMM telephones under any circumstances. This is to ensure that telephones are available for marketing option issues, responding to customer inquiries, or otherwise conducting Exchange business relating to Market Makers and Lead Market Makers.

Clerks

Proposed Rule 6.2(h)(5) states that Floor Broker Clerks and Stock Executions Clerks are subject to the same terms and conditions on telephone use as Floor brokers and that Market Maker Clerks are subject to the same terms and conditions on telephone use as Market Makers. Proposed Rule 6.2(h)(5)(D) further states that the Options Floor Trading Committee reserves the right to prohibit clerks from using cellular or cordless phones on the floor at any time that it is necessary due to electronic interference problems¹¹ or capacity problems¹² resulting from the number of such phones then in use on the Options Floor. In such circumstances, the Committee will first consider restricting the use of such phones by Market Maker Clerks, then by Stock Execution Clerks, and then finally, by Floor Broker Clerks.

Floor Managers

Proposed Rule 6.2(h)(6) states that Member Firm Floor Managers may use any telephone except the Pit Rep or LMM phones,¹³ including any cellular or cordless phones, for any business purpose relating to their management responsibilities.

General Access Phones, Telephone Records, and Exchange Liability

Proposed Rule 6.2(h)(7) states that the general access phones located outside the trading areas may be used by any Member, Clerk, or Member Firm Floor Manager to communicate with persons on the Options Floor. Proposed Rule 6.2(h)(8) states that Members must maintain their cellular or cordless telephone records, including logs of calls placed, for a period of not less than one year. Further, the Exchange reserves the right to inspect such records pursuant to Rule 10.2.¹⁴

Finally, proposed Rule 6.2(h)(9) states that the Exchange assumes no liability to Members or Member Firms due to conflicts between phones in use on the Options Floor or due to electronic interference problems resulting from the use of telephones on the Options Floor.

Minor Rule Plan

Currently, the PCX Minor Rule Plan ("MPR") includes as a minor rule violation, the unauthorized use of telephones located in the trading post areas.¹⁵ The PCX is proposing to change the language in the Rule to refer to the proposed rule on telephone use on the Options Trading Floor (Rule 6.2(h)). Specifically, the provision will now state: Floor Member or Member Firm employee violated rules on telephones on the Options Floor. In addition, the PCX is proposing to increase the fine amount for a third violation from \$750.00 to \$1,000.00 to better reflect the seriousness of a third violation within two years.¹⁶

¹⁴ Exchange Rule 10.2(d) requires members, member organizations, and persons associated with members to cooperate with regulatory investigations; including, but not limited to, furnishing documentary materials.

¹⁵ Rule 19d-1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) (order approving amendments to paragraph (c)(2) of Rule 19d-1 under the Act). Pursuant to PCX Rule 10.13, the Exchange may impose a fine on any member or member organization for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the MRP. PCX Rule 10.13(h)-(j) sets forth the specific Exchange rules deemed to be minor in nature.

¹⁶ As noted in PCX Rule 10.13(e), pursuant to Securities Exchange Act Release No. 30958, any person or organization found in violation of a minor rule under the MRP is not required to report such violation on SEC Form BD, provided that the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Accordingly,

Continued

⁸ PCX Rule 6.85, Commentary .03 provides in part: "When a Floor Broker receives a verbal order from a Market Maker, or when a Floor Broker is requested by a Market Maker to alter an order in his possession in any way, the Floor Broker shall immediately prepare an order ticket from outside the trading crowd and time-stamp it."

⁹ The Commission notes that a member would have the right to appeal any decision to suspend a member from using a headset pursuant to Exchange Rule 11.7, *Hearings and Review of Committee Action*.

¹⁰ See PCX Rule 6.67(a).

¹¹ The term "electronic interference" refers to a situation where, even though there are talk paths available, a user cannot get a good signal because of interference with monitors, static, or a bay station not working correctly. Amendment No. 1, *supra* note 3.

¹² The term "capacity problems" is used to describe a situation where a user cannot get a signal because no talk path is available on a bay station. Currently, there are 96 talk paths available. If all 96 talk paths are being used, the 97th user will be unable to get a signal because all talk paths are being used. Amendment No. 1, *supra* note 3.

¹³ See Amendment No. 3, *supra* note 6.

III. Discussion

The Commission finds that the proposed rule change is consistent with Section 6 of the Act¹⁷ and the rules and regulations thereunder. In particular, the Commission believes that the proposal is consistent with the Section 6(b)(5)¹⁸ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.¹⁹

In determining to approve the proposal, the Commission notes that the telephone registration requirement in proposed Rule 6.2(h)(1) is consistent with PCX Rule 4.22,²⁰ which requires Exchange approval of any electronic or telephonic communications devices on the floor of the Exchange. The Commission finds that it is reasonable for the Exchange to limit the power and function of telephones used on the options floor to ensure that member telephones do not cause interference with each other or with Exchange systems. Further, to enable the Exchange to effectively monitor for abuses of its telephone usage restrictions, the Commission finds that it is reasonable for the Exchange, pursuant to proposed Rule 6.2(h)(8), to require Members to maintain cellular or cordless telephone records for a period not less than one year.

The PCX's proposed Rule contains restrictions regarding telephone use by market makers. Specifically, proposed Rule 6.2(h)(3)(A) permits market makers to use their cellular or cordless phones to call any location on or off of the trading floor. In addition, proposed Rule 6.2(h)(3)(B) states that only market makers, pit reps and LMMs may use the

pit rep and LMM phones. Rule 6.2(h)(3)(B) further provides that these phones may only be used for marketing options issues, responding to customer inquiries, and otherwise conducting Exchange business. Because market makers generally do not deal directly with public customers, the Commission does not believe that allowing market makers to communicate with locations off of the trading floor raises the same regulatory concerns discussed below regarding telephone use by floor brokers.²¹ As a result, the Commission finds that it is consistent with the Act for the Exchange to allow market makers to use cellular or cordless telephones to call locations off of the trading floor. The Commission also finds that it is reasonable and consistent with the maintenance of fair and orderly markets for the exchange to limit the availability of certain telephones to certain members to ensure that these telephones are available to members as needed to conduct Exchange business.

PCX proposed Rule 6.2(h)(3)(C) requires market makers placing orders from locations off of the trading floor do so at a member firm booth and not by calling a floor broker in the crowd or using the Pit Rep and LMM phones in the trading crowd. The proposed rule contains a similar restriction for floor brokers providing that all orders entered from locations off of the floor must be placed with a person in a member firm booth. This floor broker restriction is discussed in more detail below. For the reasons discussed below, the Commission finds that it is reasonable and consistent with the Act for the Exchange to require orders being entered from locations off of the trading floor to be entered at a member firm booth.

PCX proposed Rule 6.2(h)(4)(A) prohibits floor brokers from using cellular or cordless Telephones to communicate with persons located off of the trading floor. As discussed above, PCX proposed Rule 6.2(h)(4)(B) requires telephonic orders entered from off of the trading floor to be entered at a member firm booth and not directly with a floor broker in the crowd. The Commission believes that the Exchange's prohibition on the use of telephones by floor brokers to call locations off of the floor or receive orders from off of the floor is justified by legitimate regulatory concerns. Specifically, the PCX must ensure compliance with rules requiring that members who accept orders

directly from public customers, are qualified to do so. Accordingly, this prohibition helps to provide adequate surveillance over this activity by requiring all orders to be taken at the member firm booth and restricting outside phone calls. In addition, preventing floor brokers from directly accessing market information that might only be available on the floor of the Exchange trading the securities underlying the options trading at the PCX helps to alleviate concerns about frontrunning and other forms of market manipulation. Finally, this prohibition also furthers the goal of preventing persons located off of the trading floor from having virtually direct access to the trading crowd and receiving certain time and place advantages over other customers.²²

The PCX's proposed rule also contains restrictions involving floor broker's communications while in the trading crowd. Specifically, proposed Rule 6.2(h)(4)(A) prohibits a floor broker from maintaining a continuous open line with other locations on the floor through the use of a headset. In order for the Commission to approve such restrictions, it must find that they are consistent with the Act and do not impose an unnecessary burden on competition in violation of Section 6(b)(8) of the Act.²³ The Commission finds that prohibiting floor brokers from using headsets to maintain a continuous open line with other locations on the floor is reasonable and consistent with the Act. As the commission has noted in the past, there is a marked difference between allowing non-members to communicate with members near the crowd and members actually in the trading crowd. The ability of a customer to communicate directly with a floor broker in the trading crowd would provide a significant advantage to that customer unlike the smaller advantage accruing from access to member firm booths on the trading floor.²⁴ If the Exchange allowed floor brokers to maintain an open line with a member firm booth, it could result in allowing persons located off of trading virtually direct access to a trading crowd.

Pursuant to proposed Rule 6.2(h)(5) telephone use by market maker and floor broker clerks is subject to the same terms and conditions as market makers and floor brokers. In addition, telephone use by stock execution clerks is subject to the same terms and conditions as floor brokers. Finally, the Exchange's

any fine imposed in excess of \$2,500 will be subject to reporting on SEC Form BD in addition to the immediate, rather than periodic, reporting requirement of Section 19(d)(1) of the Act. See Securities Exchange Act Release No. 30280 (January 22, 1992), 57 FR 3452 (January 29, 1992) (noting that fines in excess of \$2,500, assessed under New York Stock Exchange, Inc. ("NYSE") Rule 476A, are not considered pursuant to the NYSE's minor rule violation plan and are thus subject to the current reporting requirements of Section 19(d)(1) of the Act.)

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁰ See Securities Exchange Act Release No. 40852 (December 29, 1998), 64 FR 1058 (January 7, 1999) (Order approving PCX Rule 4.22 in SR-PCX-98-16).

²¹ Telephone conversation between Michael D. Pierson, Director, Regulatory Policy, PCX, and David Sieradzki, Special Counsel, Division of Market Regulation, SEC, on March 15, 2000.

²² Securities Exchange Act Release No. 25842 (June 23, 1988), 53 FR 24539 (June 29, 1988).

²³ 15 U.S.C. 78f(b)(8).

²⁴ See *supra* note 22.

Options Floor Trading Committee reserves the right to restrict the use of cellular or cordless telephones by clerks at any time that it is necessary due to capacity or interference problems. For the reasons expressed above regarding telephone usage by market makers and floor brokers, the Commission finds that the proposed restrictions on phone usage by clerks on the floor of the Exchange are reasonable and consistent with the Act.

Proposed Rule 6.2(h)(6) provides that floor managers may use any phone except a Pit Rep or LMM phone,²⁵ including cordless or cellular phones for any business purpose relating to their management responsibilities. The Exchange represents that, due to the nature of their job and responsibilities on the trading floor, it is important that floor managers be able to use any available phone to effectively carry out their management responsibilities.²⁶ Based on this representation, the Commission finds this proposed rule reasonable and consistent with the Act.

The Commission supports the Exchange's efforts to codify existing Exchange policies to give its membership adequate notice of what conduct is prohibited. In regulating the PCX options trading floor and devising its structure, the Commission recognizes the PCX's right to restrict, under certain circumstances, the use of telephonic communications devices that are installed on its floor. While supporting the Exchange's efforts to monitor the types of communications that are on its options trading floor and regulate their use, the Commission expects the PCX to ensure that the rule being approved today is not used to limit access to services offered by the Exchange or applied in a manner inconsistent with Sections 6(b)(5)²⁷ and 6(b)(8)²⁸ of the Act.²⁹ Specifically, the Commission expects that proposed Rule 6.2(h) will not be interpreted in a manner that permits unfair discrimination between customers, issuers, brokers, or dealers or imposes any unnecessary or inappropriate burden on competition, or is otherwise used to limit member access to Exchange services.

The Commission believes that the Exchange's proposed changes to its minor rule plan are reasonable and provide fair procedures for

appropriately disciplining members and member organizations for minor rule violations that warrant some type of punitive measure, but for which a full disciplinary hearing would be an inappropriate waste of resources in light of the minor nature of the violation. The Commission notes that violations of the Exchange's telephone policy are objective and easily verifiable, and thus, lend themselves to the use of expedited proceedings. Specifically, the issue of whether a member has improperly used a telephone on the options floor may be determined objectively and adjudicated quickly without complicated evidentiary and interpretive inquiries. The Commission believes that the proposed change to the existing fine schedule is appropriate and should serve to discourage violations of the Exchange's telephone policy on its options trading floor.

The Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment Nos. 2 and 3 make technical, non-substantive changes to the proposal. As a result, the Commission does not believe that Amendment Nos. 2 and 3 raise any new regulatory issues. Further, the Commission notes that the original proposal was published for the full 21-day comment period and the Commission received no comments regarding the proposal. Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)³⁰ of the Act, to approve Amendment Nos. 2 and 3 to the Exchange's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments 2 and 3, including whether the Amendments are 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 above-mentioned exchange. All submissions should refer to File No. SR-PCX-98-30 and should be submitted by April 19, 2000.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³¹ that the proposed rule change (SR-PCX-98-30), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-7728 Filed 3-28-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42564; File No. SR-Phlx-99-46]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to registration of Trading Floor Personnel

March 22, 2000.

I. Introduction

On November 19, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), 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 require that all trading floor personnel be registered with the Exchange, trading floor personnel successfully complete specified examinations, and all member/participant organizations notify the Exchange of any change in the status of such personnel.

The proposed rule change was published for comment in the **Federal Register** on February 7, 2000.³ No comments were received on the proposal. This order approves the proposal.

³¹ 15 U.S.C. 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 42365 (January 28, 2000), 65 FR 5922.

²⁵ See Amendment No. 3, *supra* note 6.

²⁶ Telephone conversation between Michael D. Pierson, Director, Regulatory Policy, PCX, and David Sieradzki, Special Counsel, Division of Market Regulation, SEC, on March 15, 2000.

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ 15 U.S.C. 78f(b)(8).

²⁹ See e.g., *William J. Higgins*, 48 S.E.C. 713 (1987).

³⁰ 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b).