

(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. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR-NYSE-2001-55 and should be submitted by February 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45240; File No. SR-PCX-2001-53]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Ceiling on Marketing Charges

January 7, 2002.

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 December 26, 2001, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the PCX has prepared. 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 PCX is proposing to establish a ceiling on marketing charges of \$200 per trade. The text of the proposed rule change is available at the PCX 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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had 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.

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

###### 1. Purpose

The PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from \$0 to \$1.00 per contract on a per-issue basis.<sup>3</sup> The PCX charges the marketing fees as set forth in the Schedule of Rates that it periodically files with the Commission.<sup>4</sup>

The PCX is proposing to establish a ceiling of \$200 per trade for the marketing fee. The PCX believes that the proposed rule change is reasonable and equitable because, in its view, capping each trade at \$200 would provide sufficient money for LLMs to maintain the marketing program while lessening the economic burden on Market Makers. By its terms, the proposed ceiling would become effective beginning with the January 2002 trade month.

###### 2. Basis

The PCX believes that the proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it provides for

the equitable allocation of reasonable dues, fees, and other charges among its members.

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

The PCX 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

The PCX 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

Because the PCX has designated the foregoing as a fee change pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f) thereunder,<sup>8</sup> it has become effective immediately upon filing with the Commission. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the 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.

#### 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. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No.

<sup>4</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>3</sup> See Securities Exchange Act Release 44830 (September 21, 2001), 66 FR 49728 (September 29, 2001) (SR-PCX-2001-37).

<sup>4</sup> See Securities Exchange Act Release No. 45167 (December 18, 2001), 66 FR 67346 (December 28, 2001) (SR-PCX-2001-49).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f).

SR-PCX-2001-53 and should be submitted by February 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45250; File No. SR-Phlx-2001-119]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Trading Hours of Options on Exchange-Traded Fund Shares

January 7, 2002.

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 December 26, 2001, 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 Exchange. The Exchange filed this proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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 amend Supplementary Material .01 to Phlx Rule 101, Hours of Business, to eliminate the requirement that options on Nasdaq-100 Index Tracking Stock<sup>6</sup>

will end at 4:04 PM. on the last trading day of each calendar month, and to add language regarding the trading hours of options on Exchange-Traded Fund Shares ("ETF Options").<sup>7</sup> As amended, Phlx Rule 101, Supplementary material .01 would provide that the hours of trading of ETF Options designated by the Exchange may continue until 4:15 P.M. However, the revised rule would also provide that the Exchange may close trading in such options at an early time to coincide with the close of trading in a related futures contract when trading in a related futures contract closes earlier than 4:15 P.M. The text of the proposed rule change is below. Additions are in italics; deletions are in brackets.

Hours of Business

Rule 101.

\* \* \* \* \*

Supplementary Material:  
.01 Options Trading after 4:02 P.M. A trading rotation in any class of option contracts may be effected even though employment of the rotation will result in the transaction on the Exchange after 4:02 P.M. provided such rotation is conducted pursuant to Rule 1047 or Rule 1047A. [The hours of trading for Options on Nasdaq-100 Index Tracking Stock shall commence at 9:30 AM and end at 4:15 PM, each business day, except the last trading day of each calendar month, when trading in Options on Nasdaq-100 Index Tracking Stock will end at 4:04 PM.] *Options on any series of Exchange-Traded Fund Shares so designated by the Exchange may be traded on the Exchange until 4:15 P.M. each business day. The*

and bear no liability with respect to the Products. The Corporations do not guarantee the accuracy and/or uninterrupted calculation of the Nasdaq-100 Index or any data included therein. The Corporations make no warranty, express or implied, as to results to be obtained by Licensee, owners of the Products, or any other person or entity from the use of the Nasdaq-100 Index or any data included therein. The Corporations make no express or implied warranties, and expressly disclaim all warranties of merchantability or fitness for a particular purpose or use with respect to the Nasdaq-100 Index or any data included therein. Without limiting any of the foregoing, in no event shall the Corporations have any liability for any lost profits or special, incidental, punitive, indirect, or consequential damages, even if notified of the possibility of such damages.

<sup>7</sup> Phlx Rule 1000(b)(42) defines "Exchange-Traded Fund Shares" as including Exchange-listed securities representing interests in open end unit investment trusts or pen-end management investment companies that hold securities based on an index or a portfolio of securities. The Exchange received approval by the Commission to trade options on Exchange-Traded Fund Shares on February 2, 2001. See Securities Exchange Act Release No. 43921 (February 2, 2001), 66 FR 9739 (February 9, 2001) (order approving SR-Phlx-00-107).

*Exchange may close trading at an early time to coincide with the close of trading in a related futures contract on the last business day of the month, or any other day when a related futures contract closes earlier than 4:15 P.M.*

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#### 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 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

The Phlx proposes to eliminate the requirement that trading in options on Nasdaq-100 Index Tracking Stock shall close at 4:05 P.M. on the last trading day of the calendar month, and to add new language to the rule regarding trading hours for ETF Options generally. Currently, Phlx Rule 101, Hours of Business, Supplementary Material .01 provides that options on Nasdaq-100 Index Tracking Stock shall commence at 9:30 A.M. and end at 4:15 P.M., each business day, except the last trading day of each calendar month, when trading in options on Nasdaq-100 Index Tracking Stock will end at 4:05 P.M.<sup>8</sup>

The Exchange proposes to extend trading in all ETF Options so designated by the Exchange at 4:15 P.M.<sup>9</sup> The proposed new language would also permit the Exchange to close trading before 4:15 P.M. to coincide with the close of trading in a related futures contract on the last business day of the month, or any other day when trading in a related futures contract closes earlier than 4:15 P.M. ETF Options not designated by the Exchange as eligible for trading until 4:15 P.M. would continue to trade until 4:02 P.M. The Exchange expects that it would

<sup>8</sup> See Securities Exchange Act Release No. 44055 (March 8, 2001), 66 FR 15310 (March 16, 2001) (SR-Phlx-2001-32).

<sup>9</sup> An ETF Option would be so designated by the Vice President of the Regulatory Services Department or his or her designee. The Exchange would notify members by issuance of a memorandum.

<sup>9</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>3</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>5</sup> The Phlx asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b-4(f)(6). 17 CFR 240.19b-4(f)(6).

<sup>6</sup> Nasdaq-100 Nasdaq-100 Index, and Nasdaq are trade or service marks of The Nasdaq Stock Market, Inc. (with its affiliates, the "Corporations") and are licensed for use by the Exchange. Options on Nasdaq-100 Index Tracking Stock (the "Products") have not been passed on by the Corporations as to their legality or suitability. The Products are not issued, endorsed, sold, or promoted by the Corporations. The Corporations make no warranties