

### 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 reason 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, as amended, 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 No. SR-NYSE-98-25 and should be submitted by September 7, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41712; File No. SR-PCX-99-26]

#### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to the Minimum Variation for Nasdaq-100 Shares and Disclaimer of Liability With Respect to the Nasdaq-100 Index

August 5, 1999.

Pursuant to Section 19(b) 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 July 28, 1999,<sup>3</sup> the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange subsequently filed Amendment No. 2 on July 30, 1999.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and simultaneously is approving the filing.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules on trading differentials to permit dealings in Nasdaq-100 Shares of the Nasdaq-100 Trust ("Nasdaq-100 Shares") in increments of 1/64th of \$1.00, and to amend its Portfolio Depository Receipts rules to include a disclaimer of liability with respect to the Nasdaq-100 Index in connection with the trading of the Nasdaq-100 Shares.

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

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

<sup>3</sup> The proposal was originally submitted on July 21, 1999, but was not complete. The Exchange subsequently submitted Amendment No. 1, which replaced the original filing in its entirety.

<sup>4</sup> In Amendment No. 2, the Exchange proposes (1) to add a new commentary .03 to PCX Rule 8.300 to state that the Exchange will trade, pursuant to unlisted trading privileges, Nasdaq-100 Shares that will be based on the Nasdaq-100 Index; and (2) to amend proposed PCX Rule 8.300(g) relating to disclaimers of liability of the Nasdaq-100 Index. See Letter from Robert P. Pacileo, Attorney, PCX, to Michael A. Walinkas, Associate Director, Division of Market Regulation, Commission, dated July 29, 1999 ("Amendment No. 2").

### 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 self-regulatory organization 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 III below. The self-regulatory organization 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 Exchange proposes to amend PCX Rule 5.3(b), on trading differentials, to permit dealings in Nasdaq-100 Shares in increments of 1/64th of \$1.00. The Nasdaq-100 Trust is a unit investment trust sponsored by Nasdaq-Amex Investment Product Services, Inc. with a portfolio based on the component stocks of the Nasdaq-100 Index. The Exchange intends to trade the Nasdaq-100 Shares pursuant to unlisted trading privileges under the Exchange's Portfolio Depository Receipts Rules 8.300 *et seq.*<sup>5</sup> Further, the Exchange proposes to codify language in PCX Rule 8.300, Commentary .03, to reflect that the Exchange will trade Nasdaq-100 Shares pursuant to unlisted trading privileges.<sup>6</sup> These securities are currently traded on the Amex in increments of 1/64th of \$1.00,<sup>7</sup> and thus, the Exchange believes that it is appropriate to trade these securities on the Exchange with the same minimum increment of 1/64th of \$1.00 as well.

In connection with the Exchange's licensing agreement with the Nasdaq Stock Market ("Nasdaq"), relating to liability for the calculation of the Nasdaq-100 Index in connection with the trading of the Nasdaq-100 Shares, the Exchange proposes to add PCX Rule 8.300(g) to codify a rule governing disclaimers of liability relating to the Nasdaq-100 Index. The Exchange represents that proposed PCX Rule 8.300(g) is consistent with the

<sup>5</sup> The Exchange represents that American Stock Exchange's ("Amex") PDR Rules 1000 through 1003 and the PCX's PDR rules 8.300(a) through 8.300(f) are substantially the same.

<sup>6</sup> See Amendment No. 2, *supra* note 4.

<sup>7</sup> See Securities Exchange Act Release No. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) (SR-Amex-98-34).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

disclaimer of liability language adopted by the Amex in its Rule 1006.<sup>8</sup>

## 2. Statutory Basis

The Exchange believes that this proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>10</sup> in particular, in that it is designed 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, and in general, 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.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. 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 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 PCX. All submissions should refer to File No. SR-PCX-99-26 and should be submitted by September 2, 1999.

<sup>8</sup> See Amendment No. 2, *supra* note 4.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2

The Commission finds that the PCX's proposed rule change and Amendment Nos. 1 and 2 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act<sup>12</sup> because it will facilitate transactions in securities by permitting the PCX: (1) To trade Nasdaq-100 Shares, on a UTP basis, in increments of 1/64th of \$1.00, and (2) to adopt a disclaimer of liability rule relating to the Nasdaq-100 Index, consistent with the license agreement between Nasdaq and the Exchange.

The Exchange has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change and Amendment Nos. 1 and 2 prior to the thirtieth day after the publication of the proposal in the **Federal Register**. The Commission believes that such action is appropriate, in that the proposed rule change establishes the same minimum trading variation as the Amex has adopted for Nasdaq-100 Shares. Further, the proposed rule relating to the disclaimer of liability with respect to the Nasdaq-100 Index (as stated in Amendment No. 2 of the proposed rule change) is identical to the disclaimer of liability adopted by the Amex.<sup>13</sup> For the reasons set forth above, the Commission does not believe that this proposal raises any new regulatory issues. Accordingly, the Commission finds that there is good cause for approving the proposed rule change and Amendment Nos. 1 and 2 prior to the thirtieth day after the publication of the proposal in the **Federal Register**.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change is hereby approved on an accelerated basis.

<sup>11</sup> In reviewing the proposed rule change, the Commission considered its potential impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> The Amex disclaimer of liability provision was approved in Securities Exchange Act Release Nos. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) (SR-Amex-98-34), and 41562 (June 25, 1999), 64 FR 36057 (July 2, 1999) (SR-Amex-99-22). It was subject to the full notice and comment process in Securities Exchange Act Release No. 41119 and no comments were received with respect to the disclaimer.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

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. 34-41711; File No. SR-PHLX-99-24]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Establishment of a Fee to Members for Receiving On-line Options Information

August 5, 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 June 29, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt a real-time, trade information fee of \$.0025 per trade for members receiving option trade information on-line (i.e., electronically) from the Exchange, beginning on July 1, 1999.

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

In its filing with 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.

<sup>15</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.