

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 Exchange. All submissions should refer to the File No. SR-PCX-2003-44 and should be submitted by October 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48532; File No. SR-PCX-2003-43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Elimination of the Posting Period for New ETP Holder Applicants and To Eliminate PCXE Rule 2.3(b)

September 24, 2003.

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 August 26, 2003, 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 the Exchange. On September 22, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹² 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 Steven B. Matlin, Regulatory Policy, PCX, to Geoffrey Pemble, Special Counsel, Division of Market Regulation ("Division"), Commission, dated September 17, 2003. In Amendment No. 1, the PCX noted that a sentence contained in its original filing ("Furthermore, the Exchange believes the elimination of this requirement is consistent with Section 6(b)(3) of the Act") should have been placed in the "Basis" section of the filing, rather than the "Purpose" section. In addition, the Exchange provided additional justification for its proposal under Section 6(b)(3) of the Act. This additional text is contained in the "Basis" section below.

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

The PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange, the equities trading facility of PCXE, by eliminating PCXE Rule 2.3(b) that provides for a ten-day posting period of the name of new ETP Holder applicants in the Exchange's Weekly Bulletin. The text of the proposed rule change is available at the Office of the Secretary, 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 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

As part of its continuing efforts to enhance participation on the Archipelago Exchange ("ArcaEx") facility, the PCX is proposing to expedite the timeframe in which new ETP Holders⁴ shall be granted approval for an ETP⁵ to effect transactions on the Exchange's trading facility. The Exchange is proposing to eliminate PCXE Rule 2.3(b) so that the required posting period for new ETP Holders is eliminated.

The Exchange's current rules governing application procedures for ETP Holders are set forth in PCXE Rule 2.3. Presently, Rule 2.3(b) provides that upon receipt of an application for an ETP, the applicant's name will be published for at least a ten calendar day period in the Exchange's Weekly Bulletin before approving or rejecting the application. Historically, membership-based exchanges in which members have ownership and involvement in determining who should be granted access to their facilities utilized posting rules to notify members

of parties interested in joining the exchange. The Exchange believes that because PCXE is a demutualized organization in which there are no ownership or voting rights, the posting period is not a critical part of the application process. Accordingly, the Exchange proposes to amend PCXE Rule 2.3 to eliminate subsection (b) that defines the posting period. The Exchange intends to retain all other aspects of the application process as noted in PCXE Rule 2.3 with respect to determining whether to approve an application for an ETP Holder.

The Exchange believes that the elimination of the aforementioned posting process promotes a more efficient and effective market operation by enabling Exchange access to new ETP Holders in a more timely manner.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

Furthermore, the Exchange believes the elimination of this requirement is consistent with Section 6(b)(3) of the Act.⁸ While PCXE is demutualized and therefore does not contain the traditional approval process for its applicants as a membership based exchange, the fair representation requirements of Section 6(b)(3) of the Act would still be satisfied after the proposed rule change is approved through the ETP representative on the PCX Board of Governors.⁹

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 were neither solicited nor received.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(3).

⁹ See Amendment No. 1, *supra* note 3.

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

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(i) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹ Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

Pursuant to Rule 19b-4(f)(6)(iii),¹⁴ a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.¹⁵

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.¹⁶ Accelerating the operative date will allow for a more efficient and effective market operation by enabling Exchange access to new ETP Holders in a more timely manner. For this reason, the Commission designates the proposed

rule change to be effective and operative immediately.

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.¹⁷

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 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 Exchange. All submissions should refer to the File No. SR-PCX-2003-43 and should be submitted by October 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48531; File No. SR-Phlx-2003-43]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Limitation of Liability of the Options Clearing Corporation to Exchange Members

September 24, 2003.

On June 2, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("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 Exchange By-Law 12-11 to provide that the Options Clearing Corporation ("OCC") will have no liability to Phlx members, with respect to the use, non-use, or inability to use the Options Intermarket Linkage ("Linkage"). The proposed rule change was published for comment in the **Federal Register** on August 19, 2003.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁴ and, in particular, the requirements of Section 6(b) of the Act⁵ and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ which requires, among other things, that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulation, 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, and, in general, to protect investors and the public interest.

The Commission notes that the Phlx, along with the other exchanges that are Participants in the Linkage Plan, entered

¹⁰ 15 U.S.C. 78s(b)(3)(A)(i).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ In its original filing, PCX inadvertently also had requested that the Commission waive the five day pre-filing period. PCX had, in fact, already provided the Commission with the appropriate five day notice. Telephone conference among Steven B. Matlin, Peter D. Bloom, Regulatory Policy, PCX, and Geoffrey Pemble, Special Counsel, Division, Commission (September 16, 2003).

¹⁶ For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹⁷ For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on September 22, 2003, the date that the Exchange filed Amendment No. 1.

¹⁸ 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. 48323 (August 12, 2003), 68 FR 49835.

⁴ In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).