

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX 2004-73 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX 2004-73 and should be submitted on or before September 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50152; File No. SR-PCX-2004-61]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. To Extend Until June 5, 2005, a Pilot Program Under Which It Lists Options on Selected Stocks Trading Below \$20 at One-Point Intervals**

August 5, 2004.

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 August 3, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 Organization's Statement of the Terms of Substance of the Proposed Rule Change**

PCX proposes to extend until June 5, 2005, a pilot program under which it lists options on selected stocks trading below \$20 at \$1 strike price intervals ("S1 Strike Pilot Program"). 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, 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. 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 purpose of this proposal is to extend the PCX's S1 Strike Pilot Program until June 5, 2005. The current

S1 Strike Pilot Program expires on August 4, 2004. PCX states that its member firms have expressed a continued interest in listing additional strike prices on low priced stocks so that they can provide their customers with greater flexibility in their investment choices. For this reason, PCX proposes to extend the S1 Strike Pilot Program. PCX notes that all of the issues eligible to be included in the S1 Strike Pilot Program, the procedures for adding S1 strike intervals, the procedures for phasing out \$2.50 strike price intervals, the prohibition against listing long-term options (also known as "LEAPS") in equity option classes at S1 strike price intervals, the procedures for adding expiration months and the procedures for deleting S1 strike intervals will all remain the same.<sup>3</sup>

**2. Statutory Basis**

PCX believes that the continuation of the S1 Strike Pilot Program will stimulate customer interest in options overlying lower-priced stocks by creating greater trading opportunities and flexibility. PCX further believes that continuation of the S1 Strike Pilot Program will provide customers with the ability to more closely tailor investment strategies to the precise movement of the underlying security. For these reasons, PCX believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act.<sup>4</sup> Specifically, PCX believes the proposed rule change is consistent with the requirements under section 6(b)(5)<sup>5</sup> that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in

<sup>3</sup> The Commission approved the S1 Strike Pilot Program on June 17, 2003. See Securities Exchange Act Release No. 48045 (June 17, 2003); 68 FR 37549 (June 24, 2003) ("Pilot Program Approval Order"). See also Securities Exchange Act Release No. 49818 (June 4, 2004), 69 FR 33440 (June 15, 2004) (notice of filing and immediate effectiveness of File No. SR-PCX-2004-39) (extending the S1 Strike Pilot Program until August 4, 2004) ("Pilot Extension Notice"). The Pilot Program Approval Order and the Pilot Extension Notice required PCX to provide the Commission with certain information and data covering the entire time the S1 Strike Pilot Program was in effect in the event that PCX proposed to, among other things, extend the S1 Strike Pilot Program. Accordingly, PCX has prepared and submitted a report ("Pilot Program Report") that provides data and written analysis relating to the five options classes PCX selected to participate in the S1 Strike Pilot Program.

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

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

<sup>11</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.

general, to protect investors and the public interest.

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

PCX does not believe that the proposed rule change, as amended, will impose any burden on competition 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*

PCX has not solicited, and does not intend to solicit, comments on this proposed rule change. PCX has not received any unsolicited written comments from its members or other interested persons.

### 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. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2004-61 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2004-61 and should be submitted on or before September 2, 2004.

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

After careful review, 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 exchange.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of a national securities exchange be designed 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. Specifically, the Commission believes the proposed listing of one point strike price intervals in selected equity options on a pilot basis should provide investors with more flexibility in the trading of equity options overlying stocks trading at more than \$3 but less than \$20, thereby furthering the public interest by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. The Commission also believes that the Exchange's limited Pilot Program strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wide array of investment opportunities and the need to avoid unnecessary proliferation of options series. The Commission expects the Exchange to monitor the applicable equity options activity closely to detect any proliferation of illiquid options series resulting from the narrower strike price intervals and to act promptly to remedy this situation should it occur. In addition, the Commission requests that PCX monitor the trading volume

associated with the additional options series listed as a result of the Pilot Program and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerated approval of the proposed rule change is consistent with the protection of investors and the public interest because it will permit the \$1 Strikes Pilot Program to continue without interruption through June 5, 2005. For these reasons, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,<sup>8</sup> to approve the PCX's proposal, as amended, on an accelerated basis.<sup>9</sup>

### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-PCX-2004-61) is hereby approved on an accelerated basis.

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

<sup>9</sup> If PCX proposes to (1) Extend the \$1 Strike Pilot Program beyond June 5, 2005; (2) expand the number of options eligible for inclusion in the \$1 Strike Pilot Program; or (3) seek permanent approval of the \$1 Strike Pilot Program, it must submit a pilot program report to the Commission along with the filing of such proposal. The pilot program report must cover the entire time the \$1 Strike Pilot Program was in effect and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the \$1 Strike Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the \$1 Strike Pilot Program; (3) an assessment of the appropriateness of \$1 strike price intervals for the options PCX selected for the \$1 Strike Pilot Program; (4) an assessment of the impact of the \$1 Strike Pilot Program on the capacity of the PCX's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the \$1 Strike Pilot Program and how PCX addressed them; (6) any complaints that PCX received during the operation of the \$1 Strike Pilot Program and how PCX addressed them; and (7) any additional information that would help to assess the operation of the \$1 Strike Pilot Program. The Commission expects PCX to submit a proposed rule change at least 60 days before the expiration of the \$1 Strike Pilot Program in the event PCX wishes to extend, expand, or seek permanent approval of the \$1 Strike Pilot Program. The Commission notes that the submission of a satisfactory pilot program report along with a proposed rule change to extend, expand, or permanently approve the \$1 Strike Pilot Program is a condition precedent to the future operation of the PCX's \$1 Strike Pilot Program.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-18451 Filed 8-11-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50159; File No. SR-Phlx-2004-47]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Legal Fees Incurred by the Exchange

August 5, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 4, 2004, 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. Phlx filed this proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 Phlx proposes to adopt new Phlx Rule 651 to require members, member organizations, foreign currency options participants, foreign currency options participant organizations, or persons associated with any of the foregoing ("member litigants") who bring legal proceedings against the Exchange to reimburse the Exchange for all costs associated with defending such proceedings, only when such persons or entities do not prevail and the Exchange's costs exceed a specified amount. The text of the proposed rule change is below. Proposed new language is in italics.

#### Rule 651. Exchange's Costs of Defending Legal Proceedings

*Any member, member organization, foreign currency options participant, foreign currency options participant organization, or person associated with any of the foregoing who fails to prevail in a lawsuit or other legal proceeding instituted by such person or entity against the Exchange or any of its board members, officers, committee members, employees, or agents, and related to the business of the Exchange, shall pay to the Exchange all reasonable expenses, including attorneys' fees, incurred by the Exchange in the defense of such proceeding, but only in the event that such expenses exceed \$50,000.00. This provision shall not apply to disciplinary actions by the Exchange, to administrative appeals of Exchange actions or in any specific instance where the Board<sup>6</sup> has granted a waiver of this provision.*

#### 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 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.

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

###### 1. Purpose

The purpose of the proposed rule change is to enable the Exchange to obtain reimbursement of legal costs incurred to defend litigation brought against the Exchange by member litigants where such persons or entities do not prevail in the litigation.

Legal proceedings can significantly divert staff resources away from the Exchange's regulatory and business purposes. In addition, these proceedings often require the Exchange to secure outside counsel—a costly undertaking. The Exchange believes that establishing a rule that may reduce non merit-based or vexatious legal proceedings against the Exchange by member litigants will

help protect against Exchange resources being unnecessarily diverted from the Exchange's regulatory and business objectives, thus strengthening the overall organization. To this end, the Exchange is proposing to adopt a rule similar to one already in effect at the American Stock Exchange ("AMEX") and other options exchanges<sup>7</sup> requiring specified persons who bring legal proceedings against the Exchange and/or persons acting on the Exchange's behalf but who do not prevail to reimburse the Exchange for all costs associated with defending such proceedings when these costs exceed fifty thousand dollars (\$50,000).

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5), specifically,<sup>9</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, 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 to and perfect the mechanism of a free and open market and a national market system, by requiring member litigants to reimburse the Exchange for costs of a legal defense under specified circumstances.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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. 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

<sup>7</sup> See Securities Exchange Act Release Nos. 47842 (May 13, 2003), 68 FR 27114 (May 19, 2003) (SR-AMEX-2003-35); 37421 (July 11, 1996), 61 FR 37513 (July 18, 1996) (SR-CBOE-96-02); and 37563 (August 14, 1996), 61 FR 43285 (August 21, 1996) (SR-PSE-96-21).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>11</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> Phlx asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> See e-mail from Jurij Trypupenko, Counsel and Director of Litigation and Operations, Phlx, dated August 4, 2004, which clarifies that "the Board" refers to the Board of Governors of the Philadelphia Stock Exchange.