

calculating a participant's financial ability.

The first modification to the rules requires broker-dealer participants to submit copies of supplemental reports filed pursuant to Rule 17a-11 to MBSCC concurrently with their submission to the Commission. Rule 17a-11 requires registered broker-dealers to notify the Commission of a decline in net capital below minimum requirements. In addition, MBSCC's participants may have other similar regulatory notification requirements imposed by the SEC, another regulator, or other similar authority when their capital levels or other financial requirements fall below certain levels. This rule change also requires participants to submit such notifications to MBSCC concurrently with their submission to the relevant regulatory authority. Such notices should provide MBSCC with an early warning of potential financial problems with respect to its participants.

The second modification allows MBSCC to use net asset value or other applicable indicia in calculating a participant's financial ability. MBSCC's rules do not currently specify the types of financial indicia that MBSCC may use to calculate a participant's net worth for determining whether the participant meets MBSCC's minimum financial requirements. MBSCC's analysts currently use the appropriate financial indicia for each type of participant. For example, shareholders equity is used to determine the financial ability of a bank whereas net asset value is more appropriate for determining the financial ability of certain types of funds, such as most registered investment companies. This rule change will expand the language in MBSCC's rules to permit use of the appropriate financial indicia.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of MBSCC.¹⁰ The rule change should help MBSCC to reduce risk by improving MBSCC's ability to monitor and assess the financial condition of its participants. Accordingly, the proposed rule change should help MBSCC to protect the securities and funds in its possession or control or for which it is responsible. Therefore, the Commission finds that the rule change is consistent with section 17A(b)(3)(F).

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-MBSCC-2001-06) as amended be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49164; File No. SR-PCX-2004-03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Extension of a Linkage Fee Pilot Program

January 30, 2004.

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 January 28, 2004, the Pacific Exchange, Inc. ("Exchange" or "PCX") 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 the Exchange. On January 30, 2004, the PCX filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposed rule change, as amended, on an accelerated basis.

¹ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX to Nancy Sanow, Assistant Director, Commission, dated January 29, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to make technical corrections to the Schedule of Fees and Charges for Exchange Services, originally submitted as Exhibit A to the proposed rule change.

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

The Exchange is proposing to amend its Schedule of Fees and Charges For Exchange Services to extend until July 31, 2004 the current pilot program regarding transaction fees charged for trades executed through the options intermarket linkage ("Linkage").⁴

The proposed fee schedule is available at the Exchange 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 III 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 purpose of this proposed rule change is to extend for six months the pilot program establishing PCX fees for Principal ("P") Orders and Principal Acting as Agent ("P/A") Orders executed through Linkage. The fees currently are effective for a pilot program scheduled to expire on January 31, 2004, and this filing would extend the fees through July 31, 2004. The two fees the PCX charges for P and P/A Orders are: the \$.21 per contract side basic execution fees for trading on the PCX and a \$.05 comparison fee per contract side. These are the same fees that all Exchange Members pay for non-customer transactions executed on the PCX. The Exchange does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,⁵ in general, and Section 6(b)(4)⁶, in particular, in that it provides for the equitable allocation of dues, fees

⁴ See Securities Exchange Act Release No. 47786 (May 2, 2003), 68 FR 24779 (May 8, 2003) (SR-PCX-2003-08) (order approving pilot program).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

and other charges among its members and other persons using its facilities for the purpose of executing P/A Orders or P Orders that are routed to the Exchange from other market centers.

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

No written comments were solicited or received with respect to the proposed rule change.

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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-PCX-2004-03. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Exchange. All submissions should be submitted by February 26, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1

After careful consideration, the Commission finds that the proposed

rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,⁷ and, in particular, with the requirements of section 6(b) of the Act⁸ and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act,⁹ which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Exchange's Linkage fee pilot program until July 31, 2004 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁰ for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change, as amended, will preserve the Exchange's existing pilot program for Linkage fees without interruption as the PCX and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-PCX-2004-03), as amended, is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2004.

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

Margaret H. McFarland,

Deputy Secretary.

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⁷ In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ *Id.*

¹² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49157; File No. SR-Phlx-2004-02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Post-Demutualization Fees

January 30, 2004.

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 January 7, 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 the Phlx has prepared. On January 20, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Phlx proposes to amend its schedule of dues, fees and charges to adopt permit fees in connection with the Exchange's proposed demutualization.⁴ The fees relating to the issuance of Series A-1 Permits will

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Edith Halihan, Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 16, 2004 ("Amendment No. 1"). In Amendment No. 1, the Phlx made minor changes to the section of the proposed rule change describing its text to clarify the fee obligations for members associated with more than one member organization.

⁴ In its proposed demutualization, the Phlx is seeking to convert from a non-stock corporation into a stock corporation. The Exchange has submitted a separate proposed rule change relating to the proposed demutualization. See Securities Exchange Act Release No. 48847 (November 26, 2003), 68 FR 67720 (December 3, 2003) (SR-Phlx-2003-73). The Commission notes that it approved the demutualization in Securities Exchange Act Release No. 49098 (January 16, 2004) (SR-Phlx 2003-73). As part of the demutualization, the Exchange intends to eliminate existing Exchange memberships; following demutualization, access to trading on the Exchange will be pursuant to permits rather than by ownership or leasing of Phlx memberships. The only class or series of permits to be outstanding initially will be denominated as "Series A-1 Permits." Until such time (if ever) as additional classes or series of permits are issued, the Series A-1 Permits will be referred to as "permits" on the Exchange's fee schedule.