

Ticket Data Entry: No change.  
 On-Line Comparison: No change.  
 LMM Book Operation Credit: No change.

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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 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 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 Exchange has established an Order Cancellation Fee in order to address operational problems and costs resulting from the practice of market participants canceling orders immediately after they place such orders through the Exchange's Member Firm Interface ("MFI").<sup>3</sup> While the fee was intended to temper activity among trading participants who immediately cancel orders without routing significant order flow to the Exchange, it was not intended to penalize Member Firms that, due to their systems formulas, must cancel orders that are deemed invalid and which they are not able to fill. Thus, if a Member Firm sends in an order that is not eligible for execution because it is an invalid order (the option has already expired and the Exchange has purged it from its system); has an invalid symbol (a symbol that does not refer to a valid option traded on the Exchange); or refers to an invalid series (a series that is not recognized or traded by the Exchange); such order will be rejected from the Exchange's system and the Member Firm will have to enter a cancel request in order to remove the ineligible order from its internal systems. These types of cancels are not the type of cancels that the Exchange's MFI Cancellation Fee was intended to, or should, redress. In order to ensure that this fee continues to mitigate excessive cancellations while not disadvantaging Member Firms that provide cancel requests for ineligible

orders, the Exchange proposes to modify its MFI cancellation selection criteria to exclude cancels on invalid orders, invalid series or invalid symbols from the applicability of the MFI Cancellation Fee. The Exchange believes that this proposed modification to its Schedule of Fees continues to fulfill the stated purpose of the MFI Cancellation Fee.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,<sup>4</sup> in general, and section 6(b)(4) of the Act,<sup>5</sup> in particular, in that it provides for the equitable allocation of reasonable fees among its members.

#### 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 on the proposed rule change were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder because it changes a fee imposed by the PCX. At any time within 60 days of the filing of such 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.<sup>8</sup>

## 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. SR-PCX-2003-25 and should be submitted by July 14, 2003.

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

Margaret H. McFarland,  
 Deputy Secretary.

[FR Doc. 03-15715 Filed 6-20-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48043; File No. SR-PCX-2003-15]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to its Auto-Ex Book Function Pilot Program

June 17, 2003.

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 May 21, 2003, 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 Exchange. On June 6, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule

<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> See letter from Tania J. Cho, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 5, 2003 ("Amendment No. 1"). In Amendment No. 1, PCX amended its proposal to request an extension of the pilot program discussed herein until June 30, 2004, rather than June 24, 2004 as stated in the original proposal, so that the pilot's expiration will coincide with the date on which the Exchange's "PCX Plus" system will be completely operative. See *infra* n. 6, and accompanying text.

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> See 15 U.S.C. 78(b)(3)(C).

<sup>3</sup> See Securities Act Release No. 45262 (January 9, 2002), 67 FR 2266 (January 16, 2002) (SR-PCX-2001-47).

change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

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

PCX is proposing to amend its rules to extend the Automatic Execution System ("Auto-Ex") Book Function Pilot Program to June 30, 2004. The text of the proposed rule change is available at the principal office of 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 received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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**

On June 17, 2002, the Commission approved, on a one-year basis, the Exchange's proposal to amend Rule 6.87, which governs the operation of its Auto-Ex<sup>4</sup> Book Function.<sup>5</sup> The pilot program is currently set to expire on June 22, 2003.

The Auto-Ex Book Function of POETS permits orders in the Limit Order Book to be executed via the Auto-Ex system when those orders become marketable subject to certain procedures. The function may be used when one or more orders in the Limit Order Book become marketable, as indicated by a locked or crossed market being displayed on the trading floor. When this occurs, the Lead Market Maker may direct the

Order Book Official to initiate the Auto-Ex Book Function, which will cause marketable orders in the Limit Order Book to be automatically executed against the accounts of Market Makers who are participating on the Auto-Ex system at the time.

The Exchange is requesting an additional extension of the pilot program to June 30, 2004, when the Exchange's new trading platform for options, "PCX Plus", will become completely operative. The added time permits the Exchange to phase in PCX Plus on an issue-by-issue basis.<sup>6</sup> As each issue is phased into PCX Plus, the Exchange will simultaneously phase out such issue from the Auto-Ex Book Function. PCX Plus will eventually replace the Auto-Ex Book Function in its entirety. Currently, the Auto-Ex Book Function is operating as intended and provides a service to both customers and members by facilitating the execution of orders in the Limit Order Book. Therefore, the Exchange believes that a one-year extension of the program is warranted.

##### **2. Statutory Basis**

PCX believes that this proposal is consistent with section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of section 6(b)(5),<sup>8</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition and 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 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 on the proposed rule change were neither solicited nor received.

### **III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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. SR-PCX-2003-15 and should be submitted by July 14, 2003.

### **IV. Commission's Findings and Order Granting Accelerated Approval of the 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, and, in particular, the requirements of section 6 of the Act.<sup>9</sup> Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.<sup>10</sup> The Commission believes that extension of the pilot program until June 30, 2004, provides an appropriate period of time for the Exchange to continue its Auto-Ex Book Function while it phases in its new trading platform for options, PCX Plus, on an issue-by-issue basis. In this way, the Auto-Ex Book Function can continue uninterrupted for each options class until PCX Plus is operative for that option class. Once PCX Plus is fully operational, the Exchange no longer will need to operate its Auto-Ex system.<sup>11</sup>

The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that this proposal would merely extend an existing pilot program to June

<sup>4</sup> Auto-Ex is the Automated Execution system feature of POETS for market or marketable limit orders. The Pacific Options Exchange Trading System ("POETS") is an automated trading system comprised of an options order routing system, an automatic execution system ("Auto-Ex"), an on-line limit order book system and an automatic market quote update system. Option orders can be sent to POETS via the Exchange's Member Firm Interface ("MFI"). Market and marketable limit orders sent through the MFI will be executed by Auto-Ex if they meet order type and size requirements of the Exchange.

<sup>5</sup> See Exchange Act Release No. 46082 (June 17, 2002), 67 FR 42307 (June 21, 2002).

<sup>6</sup> See Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (Order approving PCX Plus) ("PCX Plus Order").

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>11</sup> See PCX Plus Order, *supra* n. 6.

30, 2004, while the Exchange phases in its new trading platform for options. The Commission believes that it is appropriate to grant accelerated approval to the proposal in order to ensure continuous operation of this feature of PCX's current framework for the automatic execution of options orders.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-PCX-2003-15) is hereby approved on an accelerated basis, as a pilot program scheduled to expire on June 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-15770 Filed 6-20-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48034; File No. SR-Phlx-2003-41]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Increase in the Technology Fee

June 16, 2003.

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 May 30, 2003, 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 Phlx. 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 amend its schedule of dues, fees, and charges to increase its technology fee from \$150 per month to \$950 per month for Phlx members. The text of the proposed rule change is available at the Office of the

Secretary, the Phlx, and 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 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 and is set forth in sections A, B, and C below.

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

###### 1. Purpose

The Phlx proposes to amend its schedule of dues, fees, and charges to increase its technology fee from \$150 per month to \$950 per month for Phlx members. The technology fee is currently assessed on members as well as on foreign currency options participants who do not also hold legal title to a Phlx membership.<sup>3</sup> The current proposal will assess the \$950 proposed technology fee on Phlx members. A foreign currency options participant who does not also hold legal title to a Phlx membership will continue to be assessed the current technology fee of \$150 per month, and not the increased fee of \$950 per month.

In addition, the Exchange intends to amend a footnote related to its technology fee, which appears on its schedule of dues, fees, and charges, to clarify that foreign currency options participants that hold legal title to an Exchange membership are assessed the technology fee in their capacity as a Phlx member and not additionally in their capacity as a foreign currency options participant.<sup>4</sup> The Exchange

<sup>3</sup> A foreign currency options participant who also holds legal title to a Phlx membership is only assessed the fee once—in his or her capacity as a Phlx member. For example, a foreign currency options participant who also holds legal title to a Phlx membership is currently assessed a total of \$150 per month for the technology fee. Under this proposal, a total of \$950 per month would be assessed for the technology fee. Equity Trading Permit holders/organizations are not assessed the technology fee. See Securities Exchange Act Release No. 45480 (February 26, 2002), 67 FR 10029 (March 5, 2002) (SR-Phlx-2002-10).

<sup>4</sup> The Phlx revised the footnote in its schedule of dues, fees, and charges from what it had originally proposed in this rule filing. The footnote relating to the technology fee will now state the following: "Foreign currency options participants who also hold legal title to a Phlx membership are assessed the technology fee in their capacity as a Phlx member, for that membership, and not additionally

intends to implement this fee effective June 1, 2003.<sup>5</sup>

The Phlx states that the technology fee was originally instituted to reflect the costs of needed upgrades to the operating systems on the Exchange's trading floors, system software modifications, year 2000 modifications, and hardware upgrades. Also, system development costs for new risk management systems, order handling rule revisions, specialized quote feeds, and new products were captured by this fee.<sup>6</sup> Now, in addition to its original purpose, the Exchange believes the revenue generated from the technology fee should provide for a source of general funds to be used, for example, in connection with other technology-related capital and expenses, such as the purchasing, leasing, and maintenance of equipment and software, programming costs, outside vendor charges, communications costs, and debt service for funds borrowed in relation to the foregoing.

The Exchange believes an increase in the technology fee is reasonable and necessary to support the ongoing efforts and deployment of technology to facilitate trading and remain competitive. In addition, the Exchange believes that assessing the \$950 per month technology fee on members and the \$150 per month technology fee on foreign currency options participants who do not hold legal title to a Phlx membership is equitable in that the additional revenue generated from the increased technology fee is intended to be mainly used to facilitate trading on the equity and options floors, and not the foreign currency options trading floor.

The purpose of amending the footnote that accompanies the technology fee entry on the fee schedule is to clarify that foreign currency options participants that hold legal title to a Phlx membership are assessed the

in their capacity as a foreign currency options participant. ETP holders/organizations are not assessed the technology fee." Telephone conversation between Cynthia Hoekstra, Counsel, Phlx, and Mia C. Zur, Attorney, Division of Market Regulation ("Division"), Commission, on June 12, 2003.

<sup>5</sup> The technology fee had heretofore been eligible for a monthly credit of up to \$1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR-Phlx-2001-49). This credit program expired effective May 2003. The Exchange intends to file a separate proposed rule change to remove references to the member credit throughout the entire schedule of dues, fees and charges.

<sup>6</sup> See Securities Exchange Act Release Nos. 45289 (January 16, 2002), 67 FR 3525 (January 24, 2002) (SR-Phlx-2001-117), and 38394 (March 12, 1997), 62 FR 13204 (March 19, 1997) (SR-Phlx-97-09).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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.