

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

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.³

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

The purpose of this rule change is to continue in effect the July 1, 2004, reduction in clearing fees for securities option contracts until OCC's Board of Directors determines otherwise. As a result, effective January 1, 2005, OCC's clearing fees will continue to be as follows:

| Contracts per trade | Per contract fee effective January 1, 2005 |
|---------------------|--|
| 0-500 | \$0.07 |
| 501-1000 | 0.06 |
| 1,001-2,000 | 0.05 |
| >2,000 | (¹)95.00 |

¹ Capped.

The continued fee reduction recognizes the strong volume in securities options in 2004. OCC believes that this fee reduction will financially benefit clearing members and other market participants without adversely affecting OCC's ability to meet its expenses and maintain an acceptable level of retained earnings.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁴ and the rules and regulations thereunder applicable to OCC because it allows for the equitable allocation of reasonable dues, fees, and other charges among OCC's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

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

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act⁵ and Rule 19b-4(f)(2)⁶ thereunder because the proposed rule establishes or changes a due fee, or other charge. At any time within sixty days of the filing of such 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.

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. 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. Please include File Number SR-OCC-2004-22 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-OCC-2004-22. 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 OCC and on OCC's Web site at <http://www.optionsclearing.com>. 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-OCC-2004-22 and should be submitted on or before January 28, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50948; File No. SR-PCX-2004-128]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Phase-In of PCX Plus

December 29, 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 December 29, 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, II and III below, which Items have been prepared by the 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 amend PCX Rule 6.90, governing PCX Plus, in order to

³ The Commission has modified the text of the summaries prepared by OCC.

⁴ 15 U.S.C. 78q-1.

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

extend the system phase-in period from December 31, 2004 until March 31, 2005. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are bracketed.

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Rules of the Board of Governors of the Pacific Exchange, Inc.

* * * * *

Rule 6—Options Trading

* * * * *

PCX Plus

Rule 6.90(a)—No Change.

(b) System Phase-In and Applicability of the Rules. The PCX estimates that the rules applicable to PCX Plus will be implemented gradually on an issue-by-issue basis beginning October 6, 2003, and will become completely operative and applicable to all options issues by [December 31, 2004] *March 31, 2005*. At that time, the rules relating to PCX Plus will supersede existing rule that are inapplicable to the new trading environment.

(c)—(h)—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 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 Exchange proposes to amend PCX Rule 6.90 governing the PCX Plus system³ phase-in date. PCX Plus is the Exchange's electronic order delivery, execution and reporting system for designated option issues through which orders and Quotes with Size⁴ are consolidated for execution and/or display. The trading system includes an electronic communications network that

enables registered Market Makers to enter orders/Quotes with Size and execute transactions from remote locations or the trading floor. As proposed, the Exchange seeks to extend the date by which it expects to have PCX Plus completely operative and applicable to all options issues from December 31, 2004 until March 31, 2005. The Exchange represents that this extension is warranted to afford the PCX sufficient time to address any capacity issues the system may have as a result of phasing in issues currently traded on the Exchange and adding new issues to be traded on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5),⁶ 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

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)(iii) of the Act⁷ and subparagraph (f)(3) of Rule 19b-4⁸ thereunder because it is concerned solely with the administration of the Exchange. 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.

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. 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. Please include File Number SR-PCX-2004-128 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-2004-128. 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-2004-128 and should be submitted on or before January 28, 2005.

³ Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (Order Approving Proposal for PCX Plus).

⁴ See PCX Rule 6.1(b)(33) (definition of Quotes with Size).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(3).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50947; File No. SR-Phlx-2004-82]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Short Sales

December 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on December 3, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which items have been prepared by the Phlx. On December 28, 2004, the Phlx filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was filed by the Phlx as a non-controversial filing under Rule 19b-4(f)(6) of the Act.⁴ 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, pursuant to Section 19(b)(1) and Rule 19b-4 thereunder,⁵ proposes to amend Exchange Rules: 455, Short Sales; 203, Agreement of Specialists; 225, Odd-Lot Orders in Securities Which the Exchange Is the Primary Market; 785, Automated Submission of Trading Data; and 786, Periodic Reports.

The text of amended Exchange Rules 455, 203, 225, 785 and 786 is set forth below. New text is italicized; deleted text is bracketed.

* * * * *

Rule 455. Short Sales

No member or member organization shall effect a sell order or sale of any security unless such sell order or sale is effected in compliance with Securities and Exchange Commission Rule 10a-1 promulgated under the Securities Exchange Act of 1934.

[(a)(1) Except as provided in subsection (d) hereof, no member or member organization shall for his or its own account or for the account of any other person, effect on the Exchange a short sale of any security for which traders are reported pursuant to a consolidated transaction reporting system operated in accordance with a plan declared effective under Securities Exchange Act Rule 17a-15 (a "consolidated system") (i) below the price at which the last sale thereof, regular way, was reported in such consolidated system, or (ii) at the last sale price unless such price is above the next preceding different price at which a sale of such security, regular way, was reported in such consolidated system.

(2) Except as provided in subsection (d) hereof, no member or member organization shall for his or its own account, or for the account of any other person, effect on the Exchange a short sale of any security not covered by paragraph (1) of this subsection (i) below the price at which the last sale of such security, regular way, was effected on the Exchange, or (ii) at the last sale price unless such price is above the next preceding different price at which a sale of such security, regular way, was effected on the Exchange.

(3) Notwithstanding paragraph (1) of this subsection (a), the Floor Procedure Committee, in its discretion, may determine that it is necessary or appropriate in the public interest or for the protection of investors that short sales in any security for which trades are reported in a consolidated system be subject to the rule set forth in paragraph (2) hereof. Following any such designation of any such security by the Floor Procedure Committee, compliance with the terms of paragraph (2) shall constitute compliance with this subsection (a).

Marked "Long" or "Short"

(b) No member or member organization of the Exchange shall, by the use of any facility of the Exchange, execute any sell order unless such order is marked either "long" or "short".

Marking Orders

(c) No member or member organization of the Exchange shall mark a sell order "long" unless (1) the security to be delivered after sale is carried in the account for which the sale is to be effected, or (2) such member or member organization is informed that the seller owns the security ordered to be sold, and as soon as is possible without undue inconvenience or expense, will deliver the security owned to the account for which the sale is to be effected.

Exceptions

(d) The provisions of subsection (a) hereof shall not apply to:

(1) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as possible without undue inconvenience or expense;

(2) Any member or member organization in respect of a sale, for an account in which it has no interest, pursuant to an order to sell which is marked "long";

(3) Any sale of a security for which trades are reported in a consolidated system (except a sale to a stabilizing bid complying with Securities Exchange Act Rule 10b-7) by a specialist in such security for its own account (i) effected at a price equal to or above the last sale reported for such security in such consolidated system; or (ii) effected at a price equal to the most recent offer communicated for the security if such offer, when communicated, was equal to or above the last sale, regular way, reported for such security pursuant to an effective transaction reporting plan; provided, however, this exemption shall not be available for securities covered by paragraph (3) of subsection (a) hereof.

(4) Any sale by a specialist to offset odd lot orders of customers;

(5) Any sale by a specialist to liquidate a long position which is less than a round lot, provided such sale does not change the position of such specialist by more than the unit of trading;

(6) Any sale of a security for which trades are not reported in a consolidated system (except a sale to a stabilizing bid complying with Securities Exchange Act Rule 10b-7) effected with the approval of the Exchange which is necessary to equalize the price of such security on the Exchange with the current price of such security on another national securities exchange which is the principal exchange market for such security;

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Amendment No. 1 to the proposed rule change (December 28, 2004). Amendment No. 1 replaced the Exchange's original filing in its entirety.

⁴ 17 CFR 240.19b4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 28, 2004, the date the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

⁵ 17 CFR 240.19b-4.