

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45395; File No. SR-PCX-2001-33]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1, To Adopt Procedures for the Transfer of Options Positions

February 5, 2002.

On August 10, 2001, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to adopt procedures for the transfer of options positions. On December 11, 2001, the Exchange amended the proposal to: (1) Clarify the intent of the rule that after the proper request has been completed, a transfer will be automatically permitted when the transfer satisfies one of the specified categories set forth in proposed Rule 6.78(d)(1); (2) revise Item 8 to state that the proposed rule change is based, in part, on Chicago Board Options Exchange Rule 6.49A; and (3) make technical changes to the rule text.<sup>3</sup>

The proposed rule change, as amended, was published for comment in the **Federal Register** on December 31, 2001.<sup>4</sup> The Commission received no comments on the proposal.

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>5</sup> and, in particular, the requirements of section 6 of the Act<sup>6</sup>

and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>7</sup> because it establishes which position transfers may occur off the floor and which position transfers must be offered to the floor, and the procedures for effecting such transfers. The Commission believes differentiating between on floor and off floor position transfers and clearly delineating the procedures for effecting such transfers, will aid in the orderly transfer of option positions which should help to perfect the mechanism of a free and open market and a national market system, and further the public interest.<sup>8</sup>

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-PCX-2001-33), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45396; File No. SR-PCX-2002-05]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Hearing Fees for Issuer Requests for Review of Delisting Decisions

February 5, 2002.

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 January 18, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE" or "Corporation") 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 PCXE. 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 Exchange, through its wholly owned subsidiary PCXE, proposes to amend PCXE Rule 5.5(m) to require issuers to pay an appeal hearing fee of \$2,500 in connection with their appeal of the Corporation's decision to delist a security. The text of the proposed rule change is available at the Office of the Secretary, the PCX, 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 Exchange 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

PCXE Rule 5.5(m) provides the procedures with which the Corporation complies in determining to delist a security for other than routine reasons (such as redemptions, maturities, etc.). In order to determine whether the security meets the maintenance criteria, the Corporation relies upon the objective data furnished by the issuer.<sup>3</sup> If it appears that the security no longer meets the maintenance requirements, the Corporation notifies the issuer in writing describing the basis on which the Corporation is considering delisting the security and proposes to meet with the issuer to hear reasons why the issuer believes the security should not be delisted.<sup>4</sup> If the issuer does not provide a sufficient basis demonstrating that it meets the current listing criteria, the Corporation will notify the issuer that it proposes to delist the security and that the issuer has the right to appeal the decision.<sup>5</sup> An issuer who wishes to appeal may, within five days of

<sup>8</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 dated December 10, 2001 from Cindy Sink, Senior Attorney, Regulatory Policy, PCX, to Joseph Morra, Special Counsel, Division of Market Regulation, Commission and attachments ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 45188 (December 21, 2001), 66 FR 67606.

<sup>5</sup> 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).

<sup>6</sup> 15 U.S.C. 78f.

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

<sup>8</sup> The Commission also notes that the proposed rule change is based, in part, on Chicago Board Options Exchange Rule 6.49A, which the Commission approved on December 28, 1995. See Securities Exchange Act Release No. 36647, 61 FR 566 (January 8, 1996).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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 PCXE 5.5(a), Maintenance Requirements and Delisting Procedures.

<sup>4</sup> See PCXE 5.5(m)(1), Delisting Procedures.

<sup>5</sup> See PCXE 5.5(m)(2).

receiving written notice, petition the Secretary of the Corporation for an appeal hearing. The Secretary, in turn, processes the petition and forwards the request, along with the documentary evidence, to the Corporation's Board Appeals Committee, which conducts a special hearing in order to make a final determination on the merits of the issuer's petition.

The Corporation does not currently impose a fee in connection with the appeal of delisting decisions, and consequently, there is no disincentive for frivolous appeals of the Corporation's delisting decisions. This, coupled with the fact that the Corporation expends significant resources in accommodating appeals, has caused the Corporation to incur expenses that it is not capable of recovering. Given the increasing costs associated with an appeal hearing, *i.e.*, the allocation of time incurred by the Corporation's Listing Qualifications Department, the Secretary of the Corporation, Corporation counsel and the Board Appeals Committee, the Exchange proposes to impose hearing fees in order to recoup some of its costs. Accordingly, the Corporation proposes to amend PCXE Rule 5.5(m) to require issuers to submit a fee of \$2,500 in order to cover a portion of the cost of an appeal hearing. The proposed rule requires that the issuer submit the fee within five days of receiving written notice of the Corporation's decision to delist a security. During this time frame, the issuer will also be required to submit a written request for a hearing. If the issuer does not submit a hearing fee or a written statement by the time prescribed by the Corporation, the issuer will be deemed to have waived its right to appeal the delisting decision.

The Exchange believes that the proposed fee is fair and reasonable as it is intended to cover only a portion of the Corporation's expenses associated with the processing and hearing of delisting appeals.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b)<sup>6</sup> of the Act, in general, and section 6(b)(4) of the Act,<sup>7</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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

The Exchange represents that the proposed rule change will impose no burden on competition.

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

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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 File No. SR-PCX-2002-05 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45391; File No. SR-Phlx-2001-33]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. and Amendment Nos. 1 and 2 Relating to Solicitation of Trading Interest on the Exchange Floor

February 4, 2002.

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 March 8, 2001, 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. On May 11, 2001, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission.<sup>3</sup> On November 21, 2001, the Exchange filed Amendment No. 2 to the proposed rule change with the Commission.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>8</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 Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 10, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the filing to request accelerated approval under section 19(b)(2) of the Act, as opposed to the proposal being immediately effective upon filing under 19(b)(C)(A) of the Act.

<sup>4</sup> See Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated November 21, 2001 ("Amendment No. 2"). In Amendment No. 2, the Exchange amended the proposal to clarify that (1) the proposed rule change pertains to an order of a size greater than the AUTO-X guarantee; (2) a single crowd participant may voice a bid or offer that is independent of the trading crowd's collective response; (3) orders under the proposed rule change would be allocated pursuant to Phlx Rule 1014(g); (4) other proposed rule changes have been submitted to further foster competitive quoting among market makers; and (5) the Exchange believes that the proposed rule change should not impact the Quote Rule or the priority of customer orders.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).