

the joint account itself is not required to have a primary appointment.<sup>6</sup>

Ninth, the PCX proposes to amend PCX Rule 6.92 on Intermarket Linkage by adding a reference to "PCX Plus" in Rule 6.92(a)(7)(ii). This change will clarify that the Intermarket Linkage rules apply to Members or Member Firms who are logged on to PCX Plus in an Eligible Option Class.

Tenth, the Exchange proposes to add an example of an Associated Person into PCX Rule 6.52, Commentary .03 for clarity.

Lastly, the Exchange proposes to make various housekeeping, grammatical, and conforming numbering changes as a result of PCX Plus, to the current rules on Market Makers and LMMs.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest. The Exchange believes that the proposed rule change, as amended, is also consistent with Section 6(b)(6) of the Act,<sup>9</sup> which requires that members and persons associated with members be appropriately disciplined for violations of Exchange rules.

### *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.

<sup>6</sup> PCX Rule 6.84(g) currently provides that "[j]oint accounts shall not be permitted to enter: (1) opening transactions from off the Floor for option contracts listed on the Exchange; (2) any transactions for option contracts not listed on the Exchange; and (3) transactions for any other security. This prohibition shall not apply to transactions entered for securities underlying Exchange option contracts in the joint account."

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

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

<sup>9</sup> 15 U.S.C. 78f(b)(6).

## 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 PCX consents, the Commission will:

(A) By order approve such 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, as amended, 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-2003-31 and should be submitted by October 20, 2003.

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. 34-48500; File No. SR-PCX-2003-36]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Composition of Its Audit Committee

September 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 July 14, 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, II, and III below, which Items have been prepared by PCX. On August 21, 2003, PCX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice, as amended, 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 is proposing to amend its rule regarding its own audit committee composition. This change is aimed at helping improve the Exchange's corporate governance. Proposed new language is in italics.

#### RULES OF THE BOARD OF GOVERNORS

##### Rule 11

Committees of the Exchange

11.8(a)-(b)—No change.  
Audit Committee

11.8(c). The Audit Committee shall be comprised of at least three Governors. *The Committee shall be made up entirely of Public Governors, and at least one member of the Committee shall have accounting or related financial management expertise, as the Board of Governors interprets such qualification in its business judgment.* The Committee shall have the responsibility to conduct an annual review with the independent auditors, to determine the scope of their examination and the cost thereof. The

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, to Leah Mesfin, Attorney, Division of Market Regulation, Commission, dated August 21, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange completely replaced the rule language submitted with the original filing.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

Committee shall periodically review with the independent auditors and the internal auditor, the Exchange's internal controls and the adequacy of the internal audit program. The Committee shall review the annual reports submitted both internally and externally, and take such action with respect thereto as it may deem appropriate. The Committee shall also recommend annually to the Board, independent public accountants as auditors of the Exchange and its subsidiaries.

11.8(d)–11.8(g)—No change.

## 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 Exchange represents that, in light of the recent changes mandated by the Sarbanes-Oxley Act of 2002 and at the request of Commission's Chairman William H. Donaldson,<sup>4</sup> the Exchange recently reviewed its own corporate governance structure. In doing so, the Exchange's Board of Governors felt that the Exchange's audit committee should follow many of the same requirements that it will asks its listed companies to adhere to.

Therefore, the Exchange is proposing to amend its Rule 11.8(c). The proposed rule will require that the PCX audit committee be comprised of at least three Governors. The committee shall be made up entirely of public Governors, and at least one member of the committee shall have accounting or related financial management expertise. The committee shall have the responsibility to conduct an annual review with the independent auditors, to determine the scope of their examination and the cost thereof. The committee shall periodically review with the independent auditors and the

internal auditor, the Exchange's internal controls and the adequacy of the internal audit program. The committee shall review the annual reports submitted both internally and externally and take such action with respect thereto as it may deem appropriate. The committee shall also recommend annually to the Board independent public accountants as auditors of the Exchange and its subsidiaries.

#### 2. Statutory Basis

The Exchange believes that the proposal furthers the objectives of Section 6(b)(5)<sup>5</sup> of the Act in that it is designed to promote just and equitable principles of trade 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

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 such 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 proposal, as amended, 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 in Washington, DC. 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-2003-36 and should be submitted by October 20, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48515; File No. SR-Phlx-2003-10]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Remote Primary Specialists

September 22, 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 February 26, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx") 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. 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 a policy to permit primary specialists to trade on a remote basis in limited circumstances. Specifically, Phlx proposes to amend Phlx Rules 444, 460, 517, 522 and 523, and to adopt new Phlx Rule 524. The text of the proposed rule change is set

<sup>4</sup> See Letter from William H. Donaldson, Chairman, Commission, to Philip D. DeFeo, Chairman, PCX, dated March 26, 2003.

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

<sup>6</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.