

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 NYSE. All submissions should refer to File No. SR-NYSE-2002-17 and should be submitted by June 3, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45872; File No. SR-PCX-2002-21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Reduction of a Surcharge Fee for the Automatic Execution of Broker-Dealer Orders

May 3, 2002.

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 April 11, 2002, the Pacific Exchange, Inc. ("Exchange" or "PCX") 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 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

The PCX is proposing to modify its Schedule of Fees and Charges by reducing the surcharge fee for the automatic execution of broker-dealer orders from \$0.45 to \$0.20.

The text of the proposed rule change is available at 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 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

I. Purpose

The Exchange is proposing to reduce the per contract surcharge fee for all broker-dealer orders³ executed via the Exchange's automatic execution system ("Auto-Ex"). The current \$0.45 per contract surcharge fee for the automatic execution of broker-dealer orders was filed for immediate effectiveness on February 4, 2002.⁴ After review of the surcharge, the Exchange believes that a reduction of the fee would encourage participation in the program and that the reduction is reasonable and appropriate.

On November 6, 2001, the Commission approved a PCX rule change proposal to amend PCX Rule 6.87(b) to permit broker-dealer orders to be executed on Auto-Ex.⁵ The amendments to PCX Rule 6.87(b) were implemented on an issue-by-issue basis, subject to the approval of the Options Floor Trading Committee.⁶

The Exchange proposes to reduce the per contract surcharge on all trades executed pursuant to the proposed rule change from a \$0.45 to \$0.20. The Exchange represents that, under the proposal, *all* trades executed via Auto-Ex on behalf of broker-dealers will be uniformly assessed the fee. The Exchange also represents that the surcharge for automatic execution of broker-dealer orders will only be charged to member firms. The Exchange asserts that these firms will be assessed

the fee monthly. The Exchange represents that bills will be issued to these firms approximately five days after the end of each trade month. The Exchange asserts that the surcharge will not apply to non-members.

The Exchange represents that amended PCX Rule 6.87(b) extends the benefits of automatic execution to broker-dealers.⁷ The Exchange asserts that such change provides instant execution without the need for a floor broker. The Exchange represents that the fast turnaround time minimizes the possibility that the market will move away from the prevailing quote. The Exchange asserts that broker-dealers who want to access the PCX's markets, but who do not want to pay the surcharge, can send their orders to the PCX for manual execution by Floor Brokers. The Exchange believes, however, that the benefits of automatic execution outweigh the burden of paying the surcharge.

The Exchange represents that broker-dealer orders that are automatically executed on Auto-Ex are not subject to brokerage fees that would otherwise be imposed by PCX members. The Exchange believes that the floor brokerage fees on broker-dealer order executions are generally comparable to the proposed surcharge amount. The Exchange represents that broker-dealer orders routed to Floor Broker Hand Held Terminals are not subject to the surcharge. The Exchange asserts that the surcharge is in addition to existing fees.

The Exchange represents that the fee will recoup costs associated with developing the new feature allowing automatic execution of broker-dealer orders in designated option issues. The Exchange asserts that the costs required to allow its Pacific Options Exchange Trading System ("POETS") to accept and execute these orders included an extensive system design change, programming and testing, and that billing programming was also required. The Exchange believes the fee is reasonable. The Exchange proposes that the reduction in the surcharge become effective on April 15, 2002.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,⁸ in general, and with Section 6(b)(4) of the Act,⁹ in particular, in that it provides for the equitable allocation

³ A broker-dealer order is an order for the account of a registered broker-dealer.

⁴ See Securities Exchange Act Release No. 45662 (March 27, 2002), 67 FR 16786 (April 8, 2002) (SR-PCX-2002-10).

⁵ See Securities Exchange Act Release No. 45032 (November 6, 2001), 66 FR 57145 (November 14, 2001) (SR-PCX-2000-05) (approving portion of proposal that allowed for orders for the account of broker-dealers to be executed on Auto-Ex on an issue-by-issue basis).

⁶ *Id.*

⁷ The Exchange represents that, previously, these benefits were only available to public customers.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

of reasonable dues, fees, and other charges among its members.

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

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and subparagraph (f)(2) of Rule 19b-4¹¹ thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of April 11, 2002, 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.¹²

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-2002-21 and should be submitted by June 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45889; File No. SR-Phlx-2002-28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend PACE Price Improvement and Order Execution and Price Protection Pilot Programs

May 7, 2002.

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 April 24, 2002, 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. The Exchange filed this proposal under Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6)⁴ thereunder, which renders the proposal effective upon filing with the Commission. 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 proposes to extend through September 30, 2002 two PACE⁵ pilot programs that were introduced with the advent of decimal pricing in the securities industry. The first PACE pilot program, which is found in Supplementary Material .07(c)(i) to Phlx Rule 229, consists of an automated price

improvement feature that incorporates a percentage of the spread between the bid and the offer ("price improvement pilot program"). The price improvement pilot program has been in effect since January 30, 2001.⁶

The second PACE pilot program, which is found in Supplementary Material .05 and .07(c)(ii) to Phlx Rule 229, incorporates immediate execution of certain market orders through the Public Order Exposure System ("POES") and mandatory double-up/double-down price protection (the "order execution and price protection pilot program"). The order execution and price protection pilot program has been in effect since August 25, 2000.⁷

The Phlx is not proposing any changes, substantive or otherwise, to the price improvement pilot program or the order execution and price protection pilot program, other than extending the pilot programs through September 30, 2002. The text of the proposed rule change is available at the Phlx 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 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.

⁶ The price improvement pilot program was established in SR-Phlx-2001-12. See Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001). It was extended several times, currently through April 15, 2002. See Securities Exchange Act Release Nos. 44672 (August 9, 2001), 66 FR 43285 (August 17, 2001) (SR-Phlx-2001-67); 45078 (November 19, 2001), 66 FR 59293 (November 27, 2001) (SR-Phlx-2001-101); and 45284 (January 15, 2002), 67 FR 3253 (January 23, 2002) (SR-Phlx-2002-01).

⁷ The order execution and price protection pilot program was established in SR-Phlx-2000-08. See Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000). It was extended several times, currently through April 15, 2002. See Securities Exchange Act Release Nos. 44185 (April 16, 2001), 66 FR 20511 (April 23, 2001) (SR-Phlx-2001-20); 44818 (September 19, 2001), 66 FR 49240 (September 26, 2001) (SR-Phlx-2001-81); 45079 (November 19, 2001), 66 FR 59292 (November 27, 2001) (SR-Phlx-2001-102); and 45295 (January 16, 2002), 67 FR 3624 (January 24, 2002) (SR-Phlx-2002-03).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² See 15 U.S.C. 78(b)(3)(C).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6). The Phlx requested that the Commission waive the 5-day pre-filing notice requirement, and the 30-day operative delay.

⁵ Philadelphia Stock Exchange Automated Communication and Execution System is the Phlx's automated order routing, delivery, execution and reporting system for equities.