

Sponsored Participants<sup>4</sup> that use the PCX's equities trading facility, the Archipelago Exchange ("ArcaEx"), by: (1) Reducing the per-share transaction fee for NYSE-listed securities to zero; (2) reducing the per-share User Transaction Credit for NYSE-listed securities to zero; and (3) eliminating the Tape A rebate for all transactions in NYSE-listed securities with the exception of Cross Orders.

## 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 had received on the proposal. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of the statements. The text of the proposed rule change is available at the PCX and at the Commission.

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

#### 1. Purpose

The PCX, through its wholly owned subsidiary PCXE, proposes to reduce the per-share round lot transaction fee for NYSE-listed securities charged to ETP Holders and Sponsored Participants (collectively, "Users") that execute trades on ArcaEx. The PCX currently charges all Users in NYSE-listed securities a transaction fee of \$0.003 per share for orders executed in the ArcaEx limit order book. The PCX is proposing to reduce this transaction fee to zero but to leave unchanged its current odd-lot fee for NYSE-listed securities.<sup>5</sup> According to the PCX, the rationale for this change is to make the pricing for executions on the ArcaEx in NYSE-listed securities more competitive. The PCX evaluated the costs and the other changes proposed in this filing and determined that it was feasible to lower the transaction fee for NYSE-listed securities traded on the ArcaEx facility.

The PCX also proposes to reduce the per-share User Transaction Credit for NYSE-listed securities to zero from \$.002 per share. With respect to the PCX's market data revenue credit for NYSE listed securities (or "Tape A

Securities"), the PCX proposes to eliminate the Tape A rebate for all transactions but Cross Orders.<sup>6</sup> A Cross Order on the ArcaEx will continue to receive a 50% tape revenue credit per qualifying trade.

#### 2. Basis

The PCX believes that the proposal is consistent with Section 6(b) of the Act,<sup>7</sup> particularly Section 6(b)(4) of the Act,<sup>8</sup> in that it provides for the equitable allocation 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 inappropriate burden on competition.

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

The PCX neither solicited nor received written comments on the proposed rule change.

## 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)<sup>9</sup> of the Act and Rule 19b-4(f)<sup>10</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the 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 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 the 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-2003-40 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Margaret H. McFarland,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48322; File No. SR-PCX-2003-20]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendments No. 1 and 2 Thereto, by the Pacific Exchange, Inc. Relating to Limitation of Liability of the Options Intermarket Linkage

August 12, 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 April 28, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to 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. On August 4, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On August 7, 2003, the PCX submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing

<sup>11</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, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 1, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a new Form 19b-4, which replaced the original filing in its entirety. In Amendment No. 1, the PCX clarified in proposed PCX Rule 13.5(a) that Options Intermarket Linkage ("Linkage"), as used to send orders and other information to or from the Exchange, is a facility or service of the Exchange for the purpose of PCX Rule 13.2. In addition, the Exchange amended PCX Rule 13.2(b) to clarify that this Rule does not apply to Linkage.

<sup>4</sup> See letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Deborah L. Flynn,

Continued

<sup>4</sup> A "Sponsored Participant" means "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29." See PCXE Rule 1.1(tt).

<sup>5</sup> Odd-lot orders that are created as a result of a partial fill of a round lot would continue to be excluded from this fee.

<sup>6</sup> A Cross Order is defined in PCXE Rule 7.31(s).

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The PCX proposes to add PCX Rule 13.5 in order to establish a provision limiting liability for the Options Clearing Corporation ("OCC") with respect to Exchange members' use of the Linkage.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*.

\* \* \* \* \*

### **Rule 13 Liability of Governors and Exchange**

\* \* \* \* \*

#### **Rule 13.2(a), Liability of Exchange**

(a)—(No change.)

(b) Whenever custody of an unexecuted order is transmitted by a member to or through the Exchange's order routing systems, electronic book or automatic executions systems or to any other automated facility of the Exchange, *excluding the Options Intermarket Linkage system*, whereby the Exchange assumes responsibility for the transmission or execution of the order, provided that the Exchange has acknowledged receipt of such order, the Exchange's liability for the negligent acts or omissions of its employees or for the failure of its systems or facilities shall not exceed the limits provided in this paragraph, (b), and no assets of the Exchange shall be applied or shall be subject to such liability in excess of the following limits:

(i)—(iii)—(No change.)

(c)—(No change.)

\* \* \* \* \*

#### **13.5(a), Liability for Options Intermarket Linkage**

*(a) The Exchange operates the Options Intermarket Linkage ("Linkage") for its Members or persons associated therewith pursuant to Rules 6.92–6.96. It shall be the responsibility of each Member or person associated therewith to verify the accuracy of transactions sent and received through the Linkage. The Linkage, as used to send orders and other information to or from the Exchange, is a facility or service afforded by the Exchange for purposes of Rule 13.2.*

Assistant Director, Division, Commission, dated August 7, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange removed a disclaimer provision contained in the proposed rule text, PCX Rule 13.5(c).

*(b) The Options Clearing Corporation, its affiliates, officers, directors, shareholders, agents and employees (collectively "OCC"), shall not be liable to Members or persons associated therewith for any loss, damage, claim or expense arising out of the use, non-use, or inability to use the Linkage, including without limitation the content of orders, trades, or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, the delays in transmission of orders, trades, or otherwise.*

\* \* \* \* \*

### **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 had 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 its liability rules by creating PCX Rule 13.5 in order to establish a provision limiting liability for the OCC with respect to PCX members' use of the Linkage. Pursuant to the Linkage Project and Facilities Management Agreement ("Agreement"),<sup>5</sup> the participating Self-Regulatory Organizations ("SROs"), including the Exchange, are required to file a proposed rule change with the Commission to provide the OCC with limited liability with respect to the Members' use of the Linkage. Under the Agreement, the SROs are required to file a proposed rule change with the Commission within four months following the Linkage's effective date of January 31, 2003. Hence, the Exchange filed this proposed rule change to fulfill its obligation under the Agreement.

The Exchange also proposes to add clarifying language in proposed PCX Rule 13.5(a) stating that the Linkage, as used to send orders and other information to or from the Exchange, is

a facility or service afforded by the Exchange for purposes of PCX Rule 13.2. In addition to such clarifying language, the PCX proposes to carve out an exception for the Linkage system in existing PCX Rule 13.2(b), as the Exchange believes that this rule is not intended to apply to the Linkage system.

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

The PCX believes that its proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular, in that it should 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.

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

The PCX does not believe that the proposed rule change, as amended, 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**

The PCX neither solicited nor received written comments concerning 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 PCX consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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

<sup>5</sup> Linkage Project and Facilities Management Agreement (January 30, 2003).

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

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

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 filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2003-20 and should be submitted by September 9, 2003.

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. 34-48313; File No. SR-Phlx-2003-49]

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

August 8, 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 11, 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 Exchange. 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 Certificate of Incorporation, Article Fifth (e) as well as Exchange By-Law Article III, Sections 3-7(a), 3-10(c), and 3-13; Article XII, Section 12-1(b); and Article XXII, Sections 22-1 and 22-2, to

provide that for each matter submitted to a vote of the membership,<sup>3</sup> except as provided by Article Thirteenth of the Certificate of Incorporation, each regular member shall be entitled to one vote for each regular membership, the legal title<sup>4</sup> of which is registered in the name of such regular member. The text of the proposed rule change is below. Additions are *italicized*; deletions are in brackets.

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#### Certificate of Incorporation of Philadelphia Stock Exchange

First-Fourth: No change.

Fifth (a)-(d): No change.

(e) *Except as otherwise provided in Article Thirteenth hereof, on each matter submitted to a vote of the membership, each Regular Member shall be entitled to one vote for each Regular Membership the legal title of which is registered in the name of such Regular Member.*

\* \* \* \* \*

#### By-Laws of Philadelphia Stock Exchange

Article III—Nominations—Annual Election—Meetings

Sec. 3-1-3-6: No change.

Members May File Independent Nominations—Requirements

Sec. 3-7. (a) Independent nominations for the positions of On-Floor, and Off-Floor Governors on the Board of Governors may be made by a written petition filed with the Secretary of the Exchange in a sealed envelope within two (2) weeks after the posting of the report of the Nominating and Elections Committee. No such nomination shall be valid unless it is signed by [not less than fifty (50)] members *holding legal title to not less than fifty (50) regular memberships*. No member shall endorse more than one (1) nominee; provided, however, that [seventy-five (75)] members *holding legal title to seventy-five (75) regular memberships* may, by petition, propose an entire ticket, or any portion thereof, for the vacancies on the Board of Governors to be filled at the ensuing election. A person is not eligible for an independent nomination for a position on the Board of Governors if one (1) or more persons associated with his member or participant organization, as defined in By-Law Section 3-6(c),

would be serving an unexpired term or terms on the Board upon the commencement of his term of office. No more than one (1) person associated with the same member or participant organization, as defined in Section 3-6(c), shall be certified by the Nominating and Elections Committee for independent nomination to a position on the Board of Governors. In the event more than one such nomination is received, the Nominating and Elections Committee shall not certify any such candidates. A person who has previously accepted nomination by the Nominating and Elections Committee for one (1) category of Governor (e.g. On-Floor or Off-Floor Governor) is not eligible to qualify as an independent candidate in any category. There may be no independent nominations of incumbent Governors whose terms do not expire following the next election. The Nominating and Elections Committee and the Secretary of the Exchange shall open such envelopes, and if found eligible for election, the persons nominated by petition conforming with the foregoing provisions shall be deemed nominees for such positions on the Board of Governors. The names of all nominees for membership on the Board of Governors, whose nominations conform with By-Law requirements, shall be sent to all members of the Exchange by the Secretary as promptly after the third Monday of February as is reasonably possible. The order of nominees' names on notices and on the ballot shall be determined through a drawing by lot conducted by the Nominating and Elections Committee.

Sec. 3-7 (b)-(c): No change.

Sec. 3-8-3-9: No change.

#### Special Meetings

Sec. 3-10. Except as otherwise specifically provided by law, special meetings of the members may be called at any time:

(a) By the Chairman of the Board of Governors; or

(b) By a majority of the Board of Governors; or

(c) By *members holding legal title to a majority of all regular memberships* entitled to vote.

Upon the written request of any person entitled to call a special meeting, which request shall set forth the purpose for which the meeting is desired, it shall be the duty of the Secretary to give prompt written notice of such meeting to be held at such time as the Secretary may fix, subject to the provisions of Section 3-11 hereof. If the Secretary shall fail to fix such date and give such notice within ten (10) days

<sup>3</sup> For instance, members vote for industry governors. See Phlx By-Law Article 3-2.

<sup>4</sup> Legal title is registered in the name of a member pursuant to a lease agreement or under an A-B-C agreement (membership title and use agreement) pursuant to Phlx Rules 930 and 940.

<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.