

of the proposed Options Listing Procedures Plan ("OLPP").<sup>4</sup>

## 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

In January 2001, the options exchanges, including the PCX, submitted a proposed OLPP to replace the JEOP as directed by the Order.<sup>5</sup> The JEOP provided joint procedures to facilitate the orderly introduction of new equity options and established a mechanism to ensure that only eligible securities were selected for options trading. The OLPP eliminates various JEOP provisions that the Commission found objectionable, as specified in the Order. Therefore, the PCX has filed the proposed rule change to withdraw from the JEOP, effective as of the date of approval of the OLPP by the Commission. The Commission approved the OLPP on July 6, 2001.<sup>6</sup>

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), New York Stock Exchange, Inc., PCX, and Philadelphia Stock Exchange, Inc. ("Phlx"). See Securities Exchange Act Release no. 29698 (September 17, 1991), 56 FR 48594 (September 25, 1991).

<sup>4</sup> The Commission directed the PCX, Amex, CBOE, and Phlx to amend the JEOP to eliminate advance notice to other markets of the intention to list a new or existing option; to eliminate any provisions of the JEOP that prevent a market from commencing to list or trade any option listed on another market or an option that another market has expressed an intent to list; and to eliminate any provisions of the JEOP that allow one market to delay the commencement of trading of an option on another market. See Section IV.B.a of the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) ("Order").

<sup>5</sup> See Exchange Act Release No. 44287 (May 10, 2001), 66 FR 27184 (May 16, 2001).

<sup>6</sup> See Securities Exchange Act Release No. 4521 (July 6, 2001, 66 FR 36809 (July 13, 2001).

Section 6(b) of the Act<sup>7</sup> in general and furthers the objectives of Section 6(b)(5)<sup>8</sup> in particular in that it is designed to promote just and equitable principles of trade, remove impediments to 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 Exchange does not believe that the proposed rule change will 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 on the proposed rule change were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder. At any time within 60 days of the filing of the 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, in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date and to waive the five-day pre-filing requirement so that the proposed rule change may take effect upon approval of the OLPP by the Commission. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to accelerate the operative date of the proposed rule change and to waive the five-day pre-filing requirement. Acceleration of the

operative date and waiving the pre-filing requirement will permit the Exchange to implement the OLPP without undue delay. For these reasons, the Commission finds good cause to designate that the proposal became operative immediately upon Commission approval of the OLPP.<sup>11</sup>

## 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 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 the File No. SR-PCX-2001-27 and should be submitted by August 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44611; File No. SR-PCX-2001-19]

### Self-Regulatory Organizations; Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Rules Under the Minor Rule Plan

July 27, 2001.

#### I. Introduction

On April 4, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"),

<sup>11</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<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. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19-4(f)(6).

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 increase fines imposed on ETP Holders, ETP Firms or associated persons of an ETP Firm of its wholly-owned subsidiary, PCX Equities, Inc. ("PCXE" or "Corporation") for violating the Exchange rules under the Minor Rule Plan. The proposed rule change was published for comment in the **Federal Register** on June 18, 2001.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

The Exchange proposes to amend PCXE's rules governing Minor Rule Plan violations to increase most fines because the Exchange believes that the current fines are too low to deter violations of PCXE rules. The Exchange further believes that an increase in the current fines will more adequately sanction violations of the PCXE's order-handling and investigating rules. Many of these violations are processed under the Minor Rule Plan.

Under the proposed increases, the fines for disruptive conduct will be \$500 for a first violation, \$2,000 for a second and \$3,500<sup>4</sup> for a third calculated on a two-year basis. More serious violations such as a member's failure to cooperate with a PCX examination of its financial responsibility or operational condition, will be fined \$2,000 for a first violation, \$4,000 for a second violation, and \$5,000 for a third violation. A member that impedes or fails to cooperate in an Exchange investigation will be fined \$3,500 for a first violation, \$4,000 for a second and \$5,000 for a third. Less serious violations such as fines for improper dress under the PCXE dress code remain the same at \$100 for the first violation, \$250 for the second and \$500 for the third.

Under the proposed rule, the Exchange's Enforcement Department would continue to exercise its discretion under PCXE Rule 10.12(j) and take cases out of the Minor Rule Plan to pursue them as formal disciplinary matters if the facts or circumstances warrant such action. The Exchange's proposal also includes amendments to PCXE's Equity Floor Procedure Advices

("EFPA") that correspond to the increased Minor Rule Plan fines.

## III. Discussion

The Commission has reviewed carefully the PCX's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>5</sup> and with the requirements of Section 6(b).<sup>6</sup> In particular, the Commission finds the proposal is consistent with Section 6(b)(5)<sup>7</sup> of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission finds the proposal is also consistent with Section 6(b)(6)<sup>8</sup> of the Act, which requires that the rules of an exchange provide that its members and associated persons be appropriately disciplined for violations of the Act and the rules of the Exchange.

The Commission believes that the proposed rule change should assist the Exchange in exercising its responsibilities as a self-regulatory organization to properly conduct surveillance and to diligently monitor its members for compliance with the securities laws. The Commission also believes that increasing the fines for Minor Rule Plan violations will serve as a deterrent, and hopefully will result in fewer violations. The Commission notes, however, that the Exchange must continue to exercise its discretion under PCX Rule 10.13(f) and pursue violations of the rules included in the Minor Rule Plan as formal disciplinary matters if the facts and circumstances of the violation warrant such action.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-PCX-2001-19) 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. 34-44599; File No. SR-Phlx-2001-50]

### Self Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposal Rule Change Relating to the Specific Inclusion of Trade Correction Data and Exemptive Relief Information in the Specialist Evaluations Conducted by the Options Allocation, Evaluation and Securities Committee

July 26, 2001.

On May 1, 2001, the Philadelphia Stock Exchange, Inc. 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 include trade correction data and exemptive relief information in the specialist evaluations conducted by the Options Allocation, Evaluation and Securities Committee.

The proposed rule change was published for comment in the **Federal Register** on June 25, 2001.<sup>3</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>4</sup> and, in particular, the requirements of Section 6 of the Act<sup>5</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>6</sup> because it is designed to perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that exemptive relief and trade correction information

<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 Securities Exchange Act Release No. 44436 (June 15, 2001), 66 FR 33734.

<sup>4</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>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 44402 (June 8, 2001), 66 FR 32856.

<sup>4</sup> The Commission notes that when the PCX imposes a sanction in excess of \$2,500, it must comply with Rule 19d-1 under the Act. 17 CFR 240.19d-1.

<sup>5</sup> In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>8</sup> 15 U.S.C. 78f(b)(6).

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