

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45374; File No. SR-PCX-2002-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to an Extension of the Interim Intermarket Linkage Program

January 31, 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 January 29, 2002, 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 the PCX. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ 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 PCX proposes to extend the effective date of its rules providing for interim linkage from January 31, 2002 to the earlier of January 31, 2003 or such time when the participating exchanges implement permanent intermarket linkage in the options market.⁵ The text of the proposed rule change is below; new language is italicized.

Interim Intermarket Linkage Program

RULE 6.91 Pilot Program for Away Market Maker Access.

(d) Implementation of the Pilot Program. The Chairman, or his designee, may implement the Pilot Program, in whole or in part, with respect to specific

Participating Exchanges, to the extent that any such Participating Exchange has agreed to implement corresponding aspects of the Pilot Program. Lead Market Maker participation in the Pilot Program will be voluntary. *The Pilot Program will expire on the earlier of January 31, 2003 or at such time when the Participating Exchanges implement permanent linkage.*

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

On February 20, 2001, the Commission issued a Notice of Filing and Immediate Effectiveness of a pilot program authorizing the PCX to participate in an interim linkage plan with the other options exchanges.⁶ The interim linkage plan utilizes existing systems to facilitate the sending and receiving of order flow between PCX market makers and their counterparts on the other option exchanges. The key component of the interim linkage is for the participating exchanges to open their automated customer execution systems, on a limited basis, to market maker orders. Market makers are able to designate certain orders as "customer" orders and are thus eligible for automatic execution and similar processing efficiencies.

The options exchanges implemented the interim linkage pending completion of a permanent linkage. That linkage will provide enhanced connectivity between the markets and will have additional rules and mechanisms to help investors achieve the best execution of their orders. While work continues on the permanent linkage, the Exchange currently does not believe that permanent linkage will be implemented until late this year. At the same time, the Exchange's interim linkage rules

will expire on January 31, 2002. The Exchange proposes to extend the effectiveness of the interim linkage rules until the full implementation of the permanent intermarket linkage in the options market, or January 31, 2003, whichever comes first. The Exchange believes investors will benefit from the continued operation of interim linkage pending completion of permanent linkage.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,⁷ in general, and section 6(b)(5),⁸ in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general, 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 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; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to section 19(b)(3)(A)

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). In its filing, the PCX requested that the Commission waive the rule's requirement of a 30-day operative delay. The PCX also requested that the Commission shorten the rule's requirement of a five-day pre-filing notice to a three-day pre-filing notice. Telephone conversation between Mai Shiver, Senior Attorney, PCX, and Jennifer Lewis, Attorney, Division of Market Regulation, Commission, on January 30, 2002.

⁵ The Commission approved the Plan for the purpose of Creating and Operating an Intermarket Options Linkage ("Linkage Plan") in July 2000. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

⁶ See Securities Exchange Act Release No. 43986 (February 20, 2001), 66 FR 12578 (February 27, 2001) (SR-PCX-2001-10).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

of the Act⁹ and Rule 19b-4(f)(6)¹⁰ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. The PCX has requested, in order to permit the uninterrupted operation of the interim linkage, that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the 30 days specified in Rule 19b-4(f)(6)(iii).¹² The Commission finds that the proposed rule change is consistent with the protection of investors and the public interest and, therefore, has determined to make the proposed rule change operative as of the date of this notice.¹³

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally requires that a self-regulatory organization give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. However, Rule 19b-4(6)(iii)¹⁵ permits the Commission to designate a shorter time. The PCX seeks to have the five-business-day pre-filing requirement shortened to a three-business-day pre-filing requirement with respect to the proposed rule change.¹⁶ The Commission has determined to shorten the five-business-day pre-filing requirement with respect to this proposal.

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, 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 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 Number SR-PCX-2002-06 and should be submitted by February 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45383; File No. SR-Phlx-2002-02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Conform Its Fee Schedule to Congress' Amendment of Section 31 of the Securities Exchange Act of 1934

February 1, 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 January 10, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 the Exchange. On February 1, 2002, the Exchange amended the proposal.³ The Exchange

filed this proposal under section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(2)⁵ 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, as amended, from interested persons.

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

The Exchange proposes to amend its schedule of dues, fees and charges to reflect the revised fees imposed pursuant to section 31 of the Act.⁶ Until recently, section 31 of the Act required that national securities exchanges pay to the SEC "a fee at a rate equal to 1/300 of one percent of the aggregate dollar amount of the sales of securities (other than bonds, debentures, other evidences of indebtedness and security futures products) transacted on such national securities exchange * * *." Congress recently passed the "Investor and Capital Markets Relief Act" ("ICMRA"),⁷ which amends section 31 of the Act. The ICMRA will reduce the fee to \$15 per \$1 million of the aggregate dollar amount of the sale of securities. In addition, section 31 fees would no longer apply to sales of options on securities indexes (other than narrow-based security indexes). The Phlx proposes to amend its schedule of dues, fees and charges to reflect the reduced section 31 fee.⁸ The new fee is effective as of December 28, 2001. 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

("Amendment No. 1"). In Amendment No. 1, the Phlx provided new text to the proposed rule, and clarified that although the fee referred to in section 31 of the Act is imposed on national securities exchanges, the Phlx imposes this same fee on its members.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(2).

⁶ 15 U.S.C. 78ee.

⁷ H.R. 1088, 107th Cong. (2001).

⁸ While the fee referred to in section 31 of the Act is imposed on national securities exchanges, the Phlx imposes this same fee on its members. See Amendment No. 1.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For purposes of accelerating the implementation of the proposed rule change only, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ See *supra* note 4.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4

³ See January 31, 2002 letter from Cynthia K. Hoekstra, Counsel, Phlx, to Joseph P. Morra, Special Counsel, Division of Market Regulation, SEC