

may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹ 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.

The Exchange asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes such waiver is consistent with the protection of investors and the public interest. The Commission notes that the PCX's market data revenue sharing program for Tape A securities is substantially similar to Nasdaq's program.²² For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.²³

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 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-2002-61 and should be submitted by November 12, 2002.

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6).

²² See Securities Exchange Act Release No. 46551 (September 25, 2002), 67 FR 61705 (October 1, 2002) (SR-NASD-2002-111) (amending NASD Rule 7010(c)(2)).

²³ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46661; File No. SR-PCX-2002-63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. To Amend Its Clearly Erroneous Policy

October 15, 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 September 23, 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 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 Exchange, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE" or "Corporation"), proposes to amend PCXE Rule 7.11(d) to confer authority on a PCXE officer designated by the Corporation who, in addition to the Chief Executive Officer and President, may nullify transactions or modify their terms arising out of any disruption or malfunction in the Archipelago Exchange ("ArcaEx") trading system, the equities trading facility of PCXE. Below is the text of the proposed rule change. Proposed new language is *italicized*. Proposed deletions are in [brackets].

* * * * *

PCX Equities, Inc.

Rule 7

Equities Trading; Clearly Erroneous Policy

Rule 7.11(a)-(c)—No change.
(d) System Disruption and Malfunctions. In the event of any

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

disruption or a malfunction in the use or operation of any electronic communications and trading facilities of the Corporation, the Chief Executive Officer, [or the] President, *or such other officer designated by the Corporation* may declare a transaction arising out of the use or operation of such facilities during the period of such disruption or malfunction null and void or modify the terms of these transactions. Absent extraordinary circumstances, any such action of the Chief Executive Officer, [or] President *or designated Corporation officer* pursuant to this subsection (d) shall be taken within thirty (30) minutes of detection of the erroneous transaction. Each ETP Holder involved in the transaction shall be notified as soon as practicable, and the ETP Holder aggrieved by the action may appeal such action in accordance with the provisions of Rule 10.13.

* * * * *

Rule 10

Disciplinary Proceedings; Hearings and Review of Decisions by the Corporation

Rule 10.13

(a) General Provisions. This Rule provides the procedure for persons aggrieved by any of the following actions taken by the Corporation to apply for an opportunity to be heard and to have the action reviewed. These actions are:

(1)-(3)—No change.

(4) The prohibition or limitation with respect to access to services provided by the Corporation, or the access to services of any ETP Holder taken pursuant to the Bylaws, or Rules or procedures of the Corporation; [or]

(5) *Actions taken by the Corporation pursuant to Rule 7.11;*

(6)[5]—No change.

(7)[6] Actions taken by the Corporation pursuant to Rule 7.23; *or*

(8)[7]—No change.

(b)-(m)—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, 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

Currently, in the event of any disruption or malfunction in the use or operation of the ArcaEx trading facility, only the Chief Executive Officer or President may declare a transaction arising out of the use of the facility during the period of such disruption or malfunction null and void or modify the terms of such transaction. Absent extraordinary circumstances, any such action of the Chief Executive Officer or President would be taken within thirty (30) minutes of detection of the erroneous transaction. Each ETP Holder involved in the transaction would be notified as soon as practicable, and the ETP Holder aggrieved by the action could appeal such action in accordance with the provisions of PCXE Rule 10.13.

The Exchange is proposing to amend PCXE Rule 7.11(d) to confer authority on a PCXE officer designated by the Corporation who, in addition to the Chief Executive Officer and President, may nullify transactions or modify their terms arising out of any disruption or malfunction in the ArcaEx trading system. This rule change will provide the PCXE with more flexibility in making time-sensitive decisions in the absence or unavailability of the Chief Executive Officer or President. The proposed rule amendment parallels PCXE Rule 7.11(b) relating to executions that are "clearly erroneous" when there is an obvious error in the terms of an order, such as price, quantity or identification of the security. The rule change also adds language to Rule 10.13 regarding appeals for non-disciplinary matters by clarifying that any ETP Holder aggrieved by an officer's determination under the PCXE's "Clearly Erroneous Policy" may appeal such action. Proposed Rule 10.13(a)(5) reiterates the statement in Rule 7.11 that any determination made by the Corporation under this policy is subject to the provisions of Rule 10.13.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)³ of the Act, in general, and further the objectives of Section 6(b)(5),⁴ in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities,

and to remove impediments and perfect the mechanisms of a free and open market 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

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

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 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 PCX. All submissions should refer to File No. PCX-2002-63 and should be submitted by November 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46660; File No. SR-Phlx-2002-50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Permanent Approval of the Pilot Program Providing for Broker-Dealer Access to AUTOM

October 15, 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 September 18, 2002, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") submitted to 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 Phlx. On October 2, 2002, Phlx submitted Amendment No. 1 to the proposed rule change.³ On October 9, 2002, Phlx submitted Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended, has been filed by the Phlx as a "non-controversial" rule change under

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Richard Rudolph, Director and Counsel, Phlx, to Jennifer Colihan, Division of Market Regulation ("Division"), Commission dated October 1, 2002. In Amendment No. 1, Phlx requested that the filing be designated as a non-controversial rule change pursuant to section 19(b)(3)(A) of the Act. In addition, the rule text was amended to reflect permanent changes to the rule that were approved in Securities Exchange Act Release No. 46296 (August 1, 2002), 67 FR 52506 (August 12, 2002) (SR-Phlx-2002-37). Finally, the Exchange represented that since the commencement of the pilot, it has not experienced any issues relating to capacity or its ability to receive, route, and automatically execute orders for the account(s) of broker-dealers via AUTOM.

⁴ See letter from Richard Rudolph, Director and Counsel, Phlx, to Jennifer Colihan, Division, Commission, dated October 9, 2002. In Amendment No. 2, the rule text was amended to accurately reflect the text that was approved on a pilot basis. See Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR-Phlx-2001-40).

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).