

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47165; File No. SR-PCX-2002-09]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. To Transfer Responsibility for Certain Auto-Ex Determinations From the Options Floor Trading Committee to Two Floor Officials**

January 10, 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 February 11, 2002, the Pacific Exchange, Inc. (“PCX”) filed with the Securities and Exchange Commission the proposed rule change as described in items I, II and III below, which the PCX has prepared. On December 31, 2002, the PCX filed Amendment No. 1 to the proposed rule change, which replaced the original filing in its entirety. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

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

The PCX is proposing to amend PCX Rule 6.87 in order to give two PCX floor officials, rather than the PCX’s Options Floor Trading Committee (“OFTC”), the authority to make day-to-day determinations with respect to the PCX’s Automatic Execution System (“Auto-Ex”). The text of the proposed rule change is below. New text is italicized and deleted text is in brackets.

#### **Automatic Execution System**

Rule 6.87(a)—No Change.

(b) Eligible Orders.

(1) Only non-broker/dealer customer orders are eligible for execution on the Exchange’s Auto-Ex System, except that [the Options Floor Trading Committee (“OFTC”)] *two Floor Officials* may determine, on an issue-by-issue basis, to allow the following types of orders to be executed on Auto-Ex:

(A) Broker-dealer orders; or

(B) Broker-dealer orders that are not for the accounts of Market Makers or Specialists on an exchange who are exempt from the provisions of Regulation T of the Federal Reserve Board pursuant to section 7(c)(2) of the Securities Exchange Act of 1934.

Broker-dealer orders entered through the Exchange’s Member Firm Interface (MFI) will not be automatically executed against orders in the limit order book. Broker-dealer orders may interact with orders in the limit order book only after being re-routed to a floor broker for representation in the trading crowd. Broker-dealer orders are not eligible to be placed in the limit order book pursuant to rule 6.52.

(2) If [the OFTC] *two Floor Officials* permit[s] broker-dealer orders to be automatically executed in an issue pursuant to this rule, then [it] *they* may also permit the following with respect to such orders:

(A) The maximum order size eligibility for broker-dealer orders may be less than the applicable order size eligibility for non-broker-dealer customer orders.

(B) Non-broker-dealer customer orders may be eligible for automatic execution at the NBBO pursuant to rule 6.87(i) while broker-dealer orders are not so eligible.

(C) Broker-dealer orders may be re-routed for manual representation when the NBBO is crossed or locked pursuant to rule 6.87(j) while non-broker-dealer customer orders would not be re-routed for manual handling in such circumstances.

(3)—(4)—No change.

(5) The Options Floor Trading Committee (“OFTC”) or its delegate consisting of *two Floor Officials* shall determine the size of orders that are eligible to be executed on Auto-Ex. *The OFTC or its delegate, two Floor Officials, may approve requests of the Lead Market Makers to execute orders on Auto-Ex in sizes greater than 20 contracts.* Although the order size parameter may be changed on an issue-by-issue basis by the OFTC or its delegate, *two Floor Officials*, the maximum order size for execution through Auto-Ex is as follows:

(A) Equity Options: the maximum order size for execution through Auto-Ex for equity options is one hundred (100) contracts;

(B) Index Options: the maximum order size for execution through Auto-Ex is one hundred (100) contracts for:

(i)—(iii)—No change.

(6) The OFTC or its delegate consisting of *two Floor Officials* may increase the size of Auto-Ex eligible orders in one or more classes of multiply traded equity options to the extent that other options exchanges permit such larger-size orders in multiply traded equity options of the same class or classes to be entered into their own automated execution systems. If the OFTC or its delegate, *two Floor*

*Officials* intend[s] to increase the Auto-Ex order size eligibility pursuant to this subsection, the Exchange will notify the Securities and Exchange Commission pursuant to section 19(b)(3)(A) of the Exchange Act.

(c)—(d)—No change.

(e) Market Maker Requirements and Eligibility. Any Exchange Member who is registered as a Market Maker and who has obtained written authorization from a clearing member is eligible to participate on the Auto-Ex system, subject to the following conditions and requirements:

(1)—No Change.

(2) All Auto-Ex trades to which a Market Maker is a party will be assigned to and clear into that Market Maker’s designated account. Market Makers may designate that their Auto-Ex trades be assigned to and clear into either an individual account or a joint account in which that Market Maker is a participant. Unless exempted by [the Options Floor Trading Committee] *two Floor Officials*, only one participant in a joint account may use the account for trading in a particular option issue at one time.

(3)—(7)—No change.

(f)—(h)—No change.

(i) Auto-Ex NBBO. The Options Floor Trading Committee (“OFTC”) or its delegate, *two Floor Officials* may approve an LMM’s request to designate electronic orders in an option issue to receive automatic executions at prices reflecting the national best bid or offer (“NBBO”), provided that the OFTC or its delegate, *two Floor Officials* may also designate, for an option issue, that an order will default for manual representation in the trading crowd [of] if the order would be executed at a price that is more than one trading increment away from the PCX market price. LMMs may determine the maximum size of orders that are eligible to receive executions at the national bid or offering price, provided that this determination is subject to the approval of the OFTC or its delegate, *two Floor Officials*.

(j) Crossed or locked Markets. [The OFTC] *Two Floor Officials* may approve an LMM’s request to designate, for an option issue, that an order will default for manual representation in the trading crowd [is] if the NBBO is crossed or locked.

(k)—(p)—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

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

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

purpose of and basis for the proposed rule change and discussed any comments it had received. The text of the 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 the statements.

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

**1. Purpose**

The OFTC conducts general supervision of the PCX options floor and recommends to the PCX's Board of Governors the rules that it believes are necessary for members to conduct fair and orderly transactions on the trading floor.<sup>3</sup> Individual members of the OFTC serve as floor officials and routinely make certain *ad hoc* decisions on the trading floor pursuant to PCX rules.<sup>4</sup> Under PCX rules, the OFTC maintains supervision over various issues that arise with respect to Auto-Ex and exercises its discretion in resolving those issues. Currently, PCX rules assign the responsibility over some Auto-Ex determinations to the entire OFTC and the responsibility for other Auto-Ex determinations to two floor officials. Consequently, the responsibility of making day-to-day determinations with respect to Auto-Ex is sometimes exercised by the full OFTC and at other times by two floor officials. The PCX believes that this split of responsibility is inconsistent and not clearly defined in current PCX rule 6.87.

The PCX now proposes to amend PCX rule 6.87 in order to transfer the responsibility for making *ad hoc* decisions on more routine Auto-Ex matters from the OFTC to two floor officials. The OFTC currently meets semi-monthly to address system-wide Auto-Ex issues, and the PCX believes that it is impractical for the OFTC to convene on the trading floor to make *ad hoc* decisions or to grant exemptive relief on a case-by-case basis. The PCX believes that referring the case-by-case decisions to two floor officials will prove to be efficient and effective, and more in line with the practical operations of the trading floor. Specifically, the PCX proposes to assign the responsibility from the OFTC to two floor officials with respect to the following matters:

<sup>3</sup> See PCX Constitution article IV, section 8(a).

<sup>4</sup> *Id* at section 8(e); see, e.g., PCX rule 6.87(h) (two Floor Officials may declare a floor-wide "fast market" under certain circumstances).

*Rule 6.87(b)—Eligible orders:* Under the proposed rule, two floor officials would be permitted to grant exemptions, on an issue-by-issue basis, allowing certain broker-dealer orders to be executed on Auto-Ex under specific circumstances.<sup>5</sup> The proposed rule further permits the OFTC to delegate to two floor officials the power to approve case-by-case requests of Lead Market Makers ("LMMs") to execute Auto-Ex orders in sizes greater than the market maker's Auto-Ex size commitment and to increase the size of eligible orders in one or more classes of multiply traded options.<sup>6</sup>

*Rule 6.87(e)—Market Maker Requirements and Eligibility:*

Under the proposed rule, two floor officials may grant an exemption to the rule that only one participant in a joint account may use the account for trading in a particular option issue at one time.

*Rule 6.87(i) "Auto-Ex NBBO:* Under the proposed rule, the OFTC may delegate to two floor officials the power to approve an LMM's request to designate electronic orders in an option issue to receive automatic executions at prices reflecting the national best bid or offer ("NBBO") under certain circumstances. The proposed rule further provides that LMMs may determine the maximum size of orders that are eligible to receive executions at the national bid or offering price, provided that this determination is subject to the approval of the OFTC or its delegate, two floor officials.

*Rule 6.87(j)—Crossed or Locked Markets:*

Under the proposed rules, two floor officials may approve an LMM's request to designate that an order will default for manual representation in the trading crowd if the NBBO is crossed or locked.

The proposed rule continues to grant to the OFTC the responsibility to make broad-based decisions.<sup>7</sup>

**2. Statutory Basis**

The PCX believes that the proposed rule change is consistent with section 6(b) of the Act<sup>8</sup> and furthers the objectives of section 6(b)(5) of the Act<sup>9</sup> in that it has been designed to facilitate transactions in securities, 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 to and perfect the mechanism of a free and open market and a national market system.

*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*

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 PCX consents, the Commission will—

(A) By order approve the 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 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-2002-09 and should be submitted by February 7, 2003.

<sup>5</sup> See PCX rule 6.87(b)(1) and (2).

<sup>6</sup> See PCX rule 6.87(b)(5) and (6).

<sup>7</sup> See, e.g., PCX rule 6.87(k) (assigning to the OFTC the responsibility to determine the manner in which orders entered through the Auto-Ex system will be assigned).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-1103 Filed 1-16-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47148; File No. SR-Phlx-2002-79]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Application Fee and the ETP Application Fee**

January 9, 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 December 17, 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. 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 amend its schedule of dues, fees and charges to increase its current Application Fee from \$200 to \$350, and to delete the reference to the separate ETP Application Fee.

#### **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 Phlx 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 Phlx 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 purpose of the proposed rule change is to amend the Exchange’s schedule of dues, fees and charges to increase its current Application Fee to \$350 in order to generate additional revenue. The Exchange currently charges a \$200 Application Fee for applications handled by the Exchange’s Membership Services Department, including applications for Exchange membership and foreign currency options (“FCO”) participation and for other applications including for approval as a seat lessor or as an inactive nominee.<sup>3</sup> The Application Fee is charged only upon the first such approval and is non-recurring; however, a lapse for six months or more necessitates the payment of an Application Fee for reapplication. For example, if a member ceases to be a member on January 1st and applies on or after July 1st of that year to once again become a member, an Application Fee will be charged. Application Fees are used to help offset Exchange clerical and administrative expenditures related to application processing including, but not limited to, regulatory background checks, registration and fingerprint card processing.<sup>4</sup>

Similarly, a \$200 ETP Application Fee is charged to applicants for equity trading permits (“ETPs”) who, at the time application is made, are not Exchange members or FCO participants.<sup>5</sup> The Exchange proposes to delete the \$200 ETP Application Fee from the fee schedule and to simply apply the Application Fee discussed in the previous paragraph to ETP applications to the same extent the Application Fee applies to membership applications. This proposal is intended to remove unnecessary complexity and duplication from the Exchange’s fee schedule in order to avoid confusion.

<sup>3</sup> Under Exchange rules a lessor need not be an Exchange member. See Phlx Rule 931, Approved Lessor.

<sup>4</sup> The Exchange has not designated the Application Fee as eligible for the Monthly Member Credit. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (approving SR-Phlx-2001-49). The Monthly Member Credit allows Exchange members to receive a monthly credit of up to \$1,000 to be applied against certain fees, dues, charges and other such amounts.

<sup>5</sup> See Securities Exchange Act Release No. 45523 (March 8, 2002), 67 FR 11738 (March 15, 2002).

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

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of section 6(b)(4) of the Act<sup>7</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities, in particular, in that it fairly allocates costs associated with application processing to those individuals and firms making such applications. The proposal also simplifies the fee schedule by eliminating the reference to the separate ETP Application Fee.

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

The Exchange 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**

No written comments were either solicited or received.

#### **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

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1)

<sup>12</sup> 17 CFR 240.19b-4.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).