

section of NSCC's Procedure II, Section E to clarify the submission requirements for a transaction to be treated as a when-issued transaction. It should be noted that due to the systems development schedule, RTTM will not be available with respect to when-issued corporate debt securities transactions upon implementation. NSCC will file a rule change pursuant to Section 19(b)(3) of the Act and will notify members when the service becomes available for these transactions.

(3) Technical corrections will be made to the use of the term "settlement date" so that when referenced with upper case letters it means the settlement date as established by NSCC.<sup>13</sup>

### III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.<sup>14</sup> The Commission finds that NSCC's proposed rule change is consistent with this requirement because it should permit the accurate clearance and settlement of securities by enabling NSCC to process fixed income trades more efficiently.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-2003-15) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>13</sup> For example, if a trade is executed on September 15 with a contract settlement date of September 18 but the trade does not match until September 18 or later, NSCC will provide the Settlement Date.

<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49293; File No. SR-PCX-2004-02]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Elimination of the Posting Period for an Application for Reinstatement

February 23, 2004.

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 January 28, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), 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 18, 2004, the PCX amended the proposed rule change.<sup>3</sup> The PCX filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission.<sup>6</sup> 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 amend its rules governing the Archipelago Exchange ("ArcxEx"), the equities trading facility of PCXE, by amending PCXE Rule 11.7 to eliminate the 10-day period upon which the Exchange must give notification to all Equity Trading Permit ("ETP") Holders of an application for reinstatement. The text of the proposed rule change is available at the Office of

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

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

<sup>3</sup> See letter from Steven B. Matlin, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 9, 2004 ("Amendment No. 1"). In Amendment No. 1, the PCX provided additional justification for its proposal under section 6(b)(3) of the Act and corrected the title of the proposed rule change. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on February 18, 2004, the date the Exchange filed Amendment No. 1.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> The PCX provided the Commission with notice of its intent to file the proposed rule change on January 21, 2004. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

the Secretary, PCX 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 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

As part of its ongoing efforts to enhance participation on ArcaEx, the PCX recently amended its rules to expedite the timeframe within which new ETP Holders may effect transactions on the Exchange. On September 24, 2003, the Exchange eliminated its requirement that the names of all new ETP applicants must be published for 10 days in the Exchange's Weekly Bulletin.<sup>7</sup> The Exchange notes that although it eliminated the 10-day posting period for new applicants, it maintains the 10-day posting period for applicants seeking reinstatement to the Exchange pursuant to PCXE Rule 11.7. In order to make the rules consistent, the Exchange is proposing to amend PCXE Rule 11.7 to eliminate the 10-day period during which the Exchange must give notification to all ETP Holders of an application for reinstatement.

The Exchange's current rules governing reinstatement procedures for ETP Holders and associated persons of ETP Holders are set forth in PCXE Rule 11.7. Presently, PCXE Rule 11.7 provides that upon sufficient proof of a resolution of the problem or problems responsible for such suspension, the Exchange shall notify in writing all ETP Holders of the application for reinstatement and that a meeting of the PCXE Board will be held not less than 10 business days subsequent to such notice. Historically, membership-based exchanges in which members have ownership and involvement in determining who should be granted access to their facilities used posting

<sup>7</sup> See Securities Exchange Act Release No. 34-48532 (September 24, 2003), 68 FR 56369 (September 30, 2003) (SR-PCX-2003-43).

rules to notify members of parties interested in joining the exchange. Consistent with the rationale of eliminating the requirement for new applicants, the Exchange believes that because PCXE is a demutualized organization in which there are no ownership or voting rights, the posting period is not a critical part of the application or reinstatement process. Accordingly, the Exchange proposes to amend PCXE Rule 11.7 to eliminate the 10-day notification period.

The Exchange believes that the elimination of the posting process promotes a more efficient and effective market operation by enabling Exchange access to ETP Holders in a more timely manner. Due to the fact that ETP Holders are not involved in the application approval process, and because the basis for the notification process was to inform individuals who were involved in membership decisions of the status of such applications, the Exchange believes eliminating the posting period is merely an administrative change necessary to streamline the process of enabling ETP Holders access to the Exchange.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>8</sup> in general, and further the objectives of section 6(b)(5),<sup>9</sup> 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. Furthermore, the Exchange believes the elimination of this requirement is consistent with section 6(b)(3) of the Act.<sup>10</sup> While PCXE is demutualized and therefore does not contain the traditional approval process for its applicants as a membership-based exchange, the fair representation requirements of section 6(b)(3) of the Act<sup>11</sup> would still be satisfied after the proposed rule change is approved through the ETP representative on the PCX Board of Governors.<sup>12</sup>

### *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**

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act<sup>13</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>14</sup> Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, 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 given 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, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

Pursuant to Rule 19b-4(f)(6)(iii),<sup>17</sup> a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.<sup>18</sup>

The Commission believes that waiving the 30-day operative delay is

consistent with the protection of investors and the public interest,<sup>19</sup> because it will allow for a more efficient and effective market operation by enabling Exchange access to new ETP Holders in a more timely manner. For this reason, the Commission designates the proposed rule change to be effective and operative immediately.

At any time within 60 days after 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 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 Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-PCX-2004-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-2004-02 and should be submitted by March 22, 2004.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>18</sup> In its original filing, the PCX inadvertently requested that the Commission also waive the five-day pre-filing period. The PCX had, in fact, already provided the Commission with the appropriate five-day pre-filing notice. Telephone call between Steven B. Matlin, Regulatory Policy, PCX, and David Hsu, Attorney, Division, Commission on February 4, 2004.

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

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

<sup>10</sup> 15 U.S.C. 78f(b)(3).

<sup>11</sup> *Id.*

<sup>12</sup> See Amendment No. 1, *supra* note 3.

<sup>19</sup> For purposes 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.<sup>20</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49312; File No. SR-Phlx-2004-13]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Phlx/KBW Bank Index 10-for-1 Split

February 24, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 17, 2004, 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 Phlx has submitted the proposed rule change under section 19(b)(3)(A) of the Exchange Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 Phlx proposes to reduce the value of its Phlx/KBW Bank Index ("Index") option ("BKX") to one-tenth its present value by multiplying by ten the base market divisor used to calculate the Index. In addition, the position and exercise limits applicable to the BKX (currently 24,000 contracts) will be increased to 44,000 contracts. The Index is a cash-settled, capitalization-weighted, narrow-based, A.M. settled index composed of 24 geographically diverse stocks representing national money center banks and leading regional institutions.<sup>5</sup>

<sup>20</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> 15 U.S.C. 78s(b)(3)(A).

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

<sup>5</sup> The Index is currently composed of the following stocks: Citigroup, Inc., Bank of America

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

In its filing with the Commission, Amex 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 the most significant aspects of such statements.

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

###### 1. Purpose

The purpose of the proposed rule change is to attract additional liquidity to the BKX. A ten-for-one split, which reduces the value of the Index, should have a positive effect on overall transaction volumes by making the option premiums more attractive for retail investors. By reducing the value of the Index, investors will be able to utilize the BKX as a trading vehicle while extending a smaller outlay of capital. This should attract additional investors and, in turn, create a more active and liquid trading environment.

The Exchange began trading the BKX in 1992.<sup>6</sup> As of January 30, 2004, the Index value was 992.69 and the near-month at-the-money call premium was \$16.25 per contract. The Exchange proposes to conduct a "ten-for-one split" of the Index, such that the Index value would be reduced to one-tenth of its current value, or 99.27. In order to maintain economic equivalence, the number of BKX contracts will be increased ten-fold, such that for each BKX contract currently held, the holder would receive ten contracts at the reduced value, each with a strike price equal to one-tenth of the original strike price. For example, the holder of one BKX 990 call with a premium of \$16.25 will receive ten BKX 99 calls with a premium of \$1.63.

Corp., Wells Fargo and Co., JP Morgan Chase & Co., Wachovia Corp., Bank One Corporation, U.S. Bancorp, Washington Mutual, Fifth Third Bancorp, FleetBoston Financial Corp., MBNA Corp., National City Corp., Bank of New York Company, SunTrust Banks, Inc., BB&T Corp., PNC Financial Services, Golden West Financial Corp., State Street Corp., Keycorp, Mellon Financial Corporation, SouthTrust Corp., Northern Trust Corp., Comerica, Inc., and Zions Bancorporation.

<sup>6</sup> See Securities Exchange Act Release No. 31145 (September 3, 1992), 57 FR 41531 (September 10, 1992) (File No. SR-Phlx-91-27).

In addition, the position and exercise limits applicable to BKX will be increased from 24,000 contracts to 44,000 contracts in order to accommodate the increased number of contracts outstanding. With the exception of the position limit change, this procedure is similar to the one employed respecting equity options where the underlying security is subject to a ten-for-one stock split.<sup>7</sup> The trading symbol will remain BKX.

In conjunction with the proposed split, the Exchange will list strike prices surrounding the new lower Index value, pursuant to Phlx Rule 1101A. The Exchange will announce the effective date by way of an Exchange memorandum to the membership, which will also serve as notice of the strike price and position limit changes.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular, in that it is designed 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 to protect investors and the public interest by establishing a lower Index value, which should, in turn, facilitate trading in BKX, creating a more liquid trading environment. The Exchange believes that reducing the value of the Index should not raise manipulation concerns and should not cause adverse market impact because the Exchange will continue to employ its surveillance procedures and has proposed an orderly procedure to achieve the Index split, including adequate prior notice to market participants.

##### 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.

<sup>7</sup> Customarily, the position and exercise limits would also be increased ten-fold in a ten-for-one split until the expiration of the then-furthest-out expiration month, after which time the position and exercise limits would revert back to their pre-split levels. See, e.g., Securities Exchange Act Release No. 42814 (May 23, 2000), 65 FR 35152 (June 1, 2000) (File No. SR-Phlx-00-11) (two-for-one split of index value resulted in a doubling of the applicable position and exercise limits). In the present case, the position and exercise limits will not revert back to pre-split levels.

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

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