

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51667; File No. SR-PCX-2004-72]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to a Proposed Rule Change and Amendments No. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto Relating to Clearly Erroneous Executions on the Archipelago Exchange

May 9, 2005.

#### I. Introduction

On July 28, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE" or "Corporation"), 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 proposal to amend the rules setting forth the procedures that an ETP Holder would be required to follow when seeking relief for clearly erroneous executions ("CEE") on the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. PCX filed Amendment No. 1 to the proposed rule change on December 29, 2004,<sup>3</sup> and filed Amendment No. 2 to the proposed rule change on February 15, 2005.<sup>4</sup> The proposed rule change and Amendments No. 1 and 2 were published for comment in the **Federal Register** on March 1, 2005.<sup>5</sup> The Commission received no comments on the proposal, as amended. PCX filed Amendment No. 3 with the Commission on April 22, 2005.<sup>6</sup> This order approves the proposed rule change and Amendments No. 1 and 2 and grants accelerated approval to and solicits comment on Amendment No. 3.

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

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

<sup>3</sup> See Amendment No. 1, submitted by Tania Blanford, Staff Attorney, PCX ("Amendment No. 1"). Amendment No. 1 replaces the original filing in its entirety.

<sup>4</sup> See Amendment No. 2, submitted by James Draddy, Vice President, Equities Regulation, PCX ("Amendment No. 2"). Amendment No. 2 replaces the original filing and Amendment No 1 in their entirety.

<sup>5</sup> See Securities Exchange Act Release No. 51280 (March 1, 2005), 70 FR 11300 (March 8, 2005) ("Notice").

<sup>6</sup> See Partial Amendment, dated April 21, 2005, submitted by Tania Blanford, Regulatory Attorney, PCX ("Amendment No. 3"). In Amendment No. 3, PCX proposes to adopt an implementation date of May 16, 2005 for the proposed rule change.

#### II. Description of Proposed Rule

The Exchange proposes to implement a revised appeal process for determinations on CEE, to be set forth in proposed PCXE Rule 7.10(c)(2)-(4). The Exchange's proposal would allow a party affected by the determination to request an appeal to the Clearly Erroneous Execution Panel ("CEE Panel") to review the determination made by an Exchange officer under proposed PCXE Rule 7.10(c)(1). The CEE Panel will be comprised of the PCXE Chief Regulatory Officer ("CRO"), or a designee of the CRO,<sup>7</sup> and representatives from two (2) ETP Holders.<sup>8</sup> Requests for appeal must be made via facsimile or e-mail within thirty (30) minutes after the party requesting the appeal is given notification of the initial determination. Thereafter, the CEE Panel shall review the information and may overturn or modify the action taken by the Exchange officer within the time frame prescribed by the Corporation. The revised process is intended to provide a timely appeal for ETP Holders in place of the lengthy general appeal process provided in PCXE Rule 10.13 (Hearings and Review of Decisions by the Corporation).

In addition, the Exchange proposes several other minor changes, as well as several organizational and stylistic changes, to PCXE's rules governing CEE, including combining PCXE Rules 7.10 and 7.11 into one rule, PCXE Rule 7.10, entitled "Clearly Erroneous Executions."<sup>9</sup>

#### III. Commission Findings and Order Granting Approval

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>10</sup> which requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to

<sup>7</sup> The Exchange represents that the designee of the CRO will be an employee of the Corporation with similar stature as the CRO, such as the VP of Equities Regulation. See Notice, *supra* note 5.

<sup>8</sup> The Exchange shall designate at least ten (10) ETP Holder representatives to be called upon to serve on the CEE Panel. In no case shall the CEE Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate in a CEE Panel on an equally frequent basis.

<sup>9</sup> For a full description of the proposed rule changes, see the Notice, *supra* note 5.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>11</sup> The proposed rule changes provide for a revised appeals process for CEE on the Archipelago Exchange that is faster in comparison to the Exchange's general appeal process for disputes among members, which previously governed such disputes.<sup>12</sup> The Commission believes that this revised appeals procedure for CEE is designed to help ensure that the Exchange's rules are exercised in a fair and reasonable manner.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after its publication in the **Federal Register**, pursuant to Section 19(b)(2) of the Act.<sup>13</sup> Amendment No. 3 revises the proposal to specify an implementation date of May 16, 2005. Amendment No. 3 does not propose any substantive changes to the proposal as published for notice and comment, and thus the Commission believes it is appropriate to accelerate approval of Amendment No. 3.

#### IV. Solicitation of Comments Concerning Amendment No. 3

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether it is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2004-72 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-72. This file number should be included on the subject line if e-mail is used. To help the

<sup>11</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> See PCXE Rule 10.13 (Hearings and Review of Decisions by the Corporation).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2004-72 and should be submitted on or before June 3, 2005.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (File No. SR-PCX-2004-72), as amended, be approved, and that Amendment No. 3 thereto be approved on an accelerated basis.

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

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51664; File No. SR-Phlx-2005-24]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Disclaimer of Warranties by SIG Indices, LLLP and by Standard and Poor's

May 6, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 20, 2005, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in items I and II below, which items have been prepared by the Phlx. 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 amend Phlx Rule 1104A (Susquehanna Indices, LLLP Indexes), regarding disclaimer of express or implied warranties, to add the new SIG Coal Producers Index™ licensed by Susquehanna Indices, LLLP (“SI”) to Phlx. The Exchange also proposes to adopt Phlx Rule 1105A (Standard and Poor's® Index), regarding disclaimer of express or implied warranties, with respect to the Standard & Poor's 500 Index (“S&P 500® Index”) that S&P® licensed to the Exchange.

The text of the proposed rule change is available on Phlx's Web site (<http://www.phlx.com>), the Phlx's Office of the Secretary, and at the Commission's Public Reference Room.

#### 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 Exchange Rule 1104A, which applies to indexes maintained by SI, to include a new index that was recently licensed by SI to the Exchange.<sup>3</sup> The purpose of the

proposed rule change is also to adopt new Phlx Rule 1105A, which is similar to existing rule 1104A but applies to the Index developed and maintained by S&P®, that was recently licensed to the Exchange and indicates that S&P® does not make specified express or implied warranties.<sup>4</sup>

Phlx Rule 1104A currently provides that SI makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of the SIG Investment Managers Index™, the SIG Cable, Media & Entertainment Index™, the SIG Casino Gaming Index™, the SIG Semiconductor Equipment Index™, the SIG Semiconductor Device Index™, the SIG Steel Producers Index™, the SIG Specialty Retail Index™, the SIG Footwear & Athletic Index™, the SIG Education Index™, and the SIG Restaurant Index™, and that SI makes no express or implied warranties of merchantability or fitness for a particular purpose for use with respect to any of the named indexes or any data included therein.<sup>5</sup> The Exchange is now proposing to amend Rule 1104A to expand the coverage of the rule to include the newly-licensed and listed index—the SIG Coal Producers Index™ as required by the license agreement issued to the Exchange.<sup>6</sup>

The Exchange is proposing to establish new Phlx Rule 1105A essentially based on current Phlx Rule 1104A, as required by a licensing agreement between S&P® and the

Equipment Index™, the SIG Semiconductor Device Index™, the SIG Steel Producers Index™, the SIG Specialty Retail Index™, the SIG Footwear & Athletic Index™, the SIG Education Index™, and the SIG Restaurant Index™, and on newly-licensed index, the SIG Coal Producers Index™, pursuant to a license agreement with SI and Exchange Rule 1009A(b). The indexes are trademarks of SIG Indices, LLLP.

<sup>4</sup> The Exchange currently lists options on Standard and Poor's Depository Receipts (“SPDRs”), pursuant to a license agreement with Standard & Poor's, a division of McGraw-Hill Companies, Inc. “Standard & Poor's®”, “S&P®”, “S&P 500®”, “Standard & Poor's 500”, and “500” are trademarks of McGraw-Hill Companies, Inc.

<sup>5</sup> The Exchange noted in its filing to adopt Rule 1104A that the proposed disclaimer was appropriate given that it was similar to disclaimer provisions of American Stock Exchange Rule 902C relating to indexes underlying options listed on that exchange. See Securities Exchange Act Release No. 48135 (July 7, 2003), 68 FR 42154 (July 16, 2003) (approving SR-Phlx-2003-21). The Exchange recently amended Rule 1104A to include the SIG Specialty Retail Index™, the SIG Steel Producers Index™, the SIG Footwear & Athletic Index™, the SIG Education Index™, and the SIG Restaurant Index™, as required by the license agreement between SI and the Exchange. See Securities Exchange Act Release No. 51239 (February 22, 2005), 70 FR 10015 (March 1, 2005) (SR-Phlx-2005-13).

<sup>6</sup> The SIG Coal Producers Index™ was listed pursuant to Sec. 19b-4(e) on March 23, 2005.

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

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

<sup>3</sup> The Exchange currently lists options on the SIG Investment Managers Index™, the SIG Cable, Media & Entertainment Index™, the SIG Casino Gaming Index™, the SIG Semiconductor

<sup>14</sup> 15 U.S.C. 78s(b)(2).

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