

proposed rule change in no way will affect the very high level of care to which OCC has always held itself and to which it is held through the regulatory oversight of the Commission.<sup>8</sup> As such, OCC believes that a gross negligence standard of care is appropriate for OCC.<sup>9</sup>

### III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control.<sup>10</sup> The Commission believes that OCC's rule change is consistent with this Section because it will permit the resources of OCC to be appropriately utilized to protect funds and assets.<sup>11</sup>

### 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

<sup>8</sup> Letter from William H. Navin, *supra*, n. 1.

<sup>9</sup> Specifically, OCC is amending Article VI of its By-Laws, "Clearance of Exchange Transactions," by adding new Section 25, "Limitation of Liability," which states:

(a) Notwithstanding any other provision in the By-Laws and Rules, the Corporation will not be liable for any action taken, or any delay or failure to take any action, under the By-Laws and Rules or otherwise, to fulfill the Corporation's obligations to its Clearing Members, other than for losses caused directly by the Corporation's gross negligence, willful misconduct, or violation of federal securities laws for which there is a private right of action. Under no circumstances will the Corporation be liable for the acts, delays, omissions, bankruptcy, or insolvency of any third party, including, without limitation, any bank or other depository, custodian, sub-custodian, clearing or settlement system, data communication service, or other third party, unless the Corporation was grossly negligent, engaged in willful misconduct, or was in violation of federal securities laws for which there is a private right of action, in selecting such third party; and

(b) Under no circumstances will the Corporation be liable for any indirect, consequential, incidental, special, punitive or exemplary loss or damage (including, but not limited to, loss of business, loss of profits, trading losses, loss of opportunity and loss of use) however suffered or incurred, regardless of whether the Corporation has been advised of the possibility of such damages or whether such damages otherwise could have been foreseen or prevented.

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>11</sup> The Commission notes that OCC's adoption of a comprehensive gross negligence standard of care and limitation of liability with respect to its clearing members does not affect the regulatory standards (e.g., those set forth in Section 17A of the Act) that apply to OCC or the way in which OCC conducts its clearing agency operations.

particular Section 17A of the Act and the rules and regulations thereunder.<sup>12</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2003-13) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-252 Filed 1-12-06; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53069; File No. SR-PCX-2006-01]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Minimum Price Variation for Entry of Orders for Equity Securities Traded on the Archipelago Exchange

January 6, 2006.

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 4, 2006, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The PCX filed the proposal pursuant to Section 19(b)(3)(A) of the 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its rules governing the Archipelago

<sup>12</sup> The Commission notes that the rule change does not alleviate OCC from liability for violation of the Federal securities laws where there exists a private right of action and therefore is not designed to adversely affect OCC's compliance with the Federal securities laws and private rights of action that exist for violations of the Federal securities laws.

<sup>13</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).

Exchange ("ArcaEx"), the equities trading facility of PCXE, to: (1) Amend Commentary .04 to PCXE Rule 7.6 on minimum price variations for quoting and entry of orders in equity securities; (2) delete Commentary .05 to PCXE Rule 7.6; (3) renumber Commentary .06 to PCXE Rule 7.6 and correct a cross-reference in that Commentary; and (4) delete Commentary .01 to PCXE Rule 6.16. The text of the proposed rule change is available on the PCX's Web site (<http://www.pacificex.com>), at the principal office of the PCX, 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 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 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 Commission adopted Regulation NMS on April 6, 2005.<sup>5</sup> One of the new rules under Regulation NMS is Rule 612, Minimum Pricing Increment. That rule prohibits a national securities exchange, its members, and quotation vendors (among others) from displaying, ranking, or accepting a bid, offer, order, or indication of interest for any NMS stock that is priced in an increment smaller than \$0.01 per share, unless it is priced less than \$1.00 per share.<sup>6</sup> In the latter case, the exchange, its members, and its quotation vendors may display, rank, or accept a bid, offer, order, or indication of interest in the NMS stock in an increment no smaller than \$0.0001 per share.<sup>7</sup> The compliance date for Rule 612 is January 31, 2006.<sup>8</sup>

Currently, PCXE Rule 7.6, Commentary .04 provides that the minimum price variation ("MPV") for

<sup>5</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005). Regulation NMS is comprised of the rules at 17 CFR 642.600-642.612.

<sup>6</sup> See 17 CFR 242.612(a).

<sup>7</sup> See 17 CFR 242.612(b).

<sup>8</sup> See Securities Exchange Act Release No. 52196 (Aug. 2, 2005), 70 FR 45529 (Aug. 8, 2005).

quoting and entering orders in equity securities traded on ArcaEx is \$0.01 per share, with the exception of securities priced less than \$1.00 per share, in which case, on a pilot basis through September 30, 2005, the MPV is \$0.001 per share. PCXE Rule 7.6, Commentary .05 provides that PCXE will round such sub-penny prices to whole penny increments, by rounding the bid down to the next whole penny and rounding the offer up to the next whole penny, and will display the rounded quotes in the consolidated quotation system without a rounding identifier.

With this filing, the Exchange is seeking to amend PCXE Rule 7.6, Commentary .04 to provide that (1) the Exchange will accept orders in equity securities traded on ArcaEx that are priced less than \$1.00 per share in increments as small as \$0.0001 per share, as permitted under Rule 612; (2) it will round such orders to whole penny increments following the same rounding conventions described above; and (3) it will display the rounded quotes in the consolidated quotation system. As currently provided in PCXE Rule 7.6, Commentary .04, the MPV for quoting and entering orders in equity securities traded on ArcaEx is \$0.01 per share.

The Exchange also proposes to delete Commentary .05 to PCXE Rule 7.6 and Commentary .01 to PCXE Rule 6.16 because they will become outdated when the amendments to PCXE Rule 7.6, Commentary .04 take effect, and to change the numbering of PCXE Rule 7.6, Commentary .06 to Commentary .05 and correct a cross-reference in that Commentary.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, 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*

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 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) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> 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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>13</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to become operative immediately. The Commission hereby grants that request.<sup>14</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal is consistent with the requirements of Rule 612 and waiving the operative delay will allow the PCX to meet the compliance deadline for Rule 612.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). As required by Rule 19b-4(f)(6)(iii) under the Act, the Exchange also provided with 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 business days prior to the date of the proposed rule change.

<sup>13</sup> See *id.*

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

### **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. 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-2006-01 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2006-01. 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, 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 will also 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-2006-01 and should be submitted on or before February 3, 2006.

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

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

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

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53070; File No. SR-Phlx-2005-63

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Prohibition of Trade Shredding

January 6, 2006.

#### I. Introduction

On October 25, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") 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> the proposed rule change relating to the prohibition of trade shredding. The proposed rule change was published for comment in the *Federal Register* on December 5, 2005.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposed to amend Rule 707, Conduct Inconsistent with Just and Equitable Principles of Trade, to prohibit members, member organizations and persons associated with or employed by a member or member organization from unbundling orders for execution for the primary purpose of maximizing a monetary or like payment to the member, member organization, or person associated with or employed by a member or member organization.

#### III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>4</sup>

particularly Section 6(b)(5) of the Act which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.<sup>5</sup> The Commission believes that the proposed rule change should help eliminate the distortive practice of trade shredding, and, therefore, promote just and equitable principles of trade.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (File No. SR-Phlx-2005-63), be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53088; File No. SR-Phlx-2005-87]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change, and Amendment No. 1 Thereto Relating to the Exchange's Covered Sale Fee and Exchange Rule 607

January 6, 2006.

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 23, 2005, 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 and II below, which Items have been prepared by the Phlx. On January 4, 2006, the Exchange filed Amendment No. 1 to the proposed rule

impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</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.

change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and is approving the amended proposal on an accelerated basis.

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

The Phlx proposes to change the title from the "SEC Fee" to "Covered Sale Fee" as it appears on the Exchange's Summary of Equity Charges and the Nasdaq-100 Index Tracking Stock<sup>SM</sup> Fee Schedule ("Fee Schedule").<sup>4</sup> The Exchange also proposes to amend Exchange Rule 607 to clarify the description of the Covered Sale Fee, including renaming the title of Phlx Rule 607 to "Covered Sale Fee" and providing a more complete description of a new arrangement for passing fees among Intermarket Trading System ("ITS") participants. Below is the text of the proposed rule change, as amended. Proposed new language is in italics; proposed deletions are in brackets. Rule 607.

[Transaction] *Covered Sale Fee*

*Under Section 31 of the Securities Exchange Act of 1934, the Exchange must pay certain fees to the Securities and Exchange Commission ("Commission"). To help fund the Exchange's obligations to the Commission under Section 31, a Covered Sale Fee is assessed by the Exchange to members and member organizations. To the extent there may be any excess monies collected under this Rule, the Exchange may retain those monies to help fund its general operating expenses. [Every member and member organization shall pay to the Exchange in such manner and at such time as the Exchange shall direct, the fees specified in Section 31 of the Securities Exchange Act of 1934, and rules thereunder, for all sales upon the Exchange of securities specified in*

<sup>3</sup> Amendment No. 1 made technical changes to the proposed rule text.

<sup>4</sup> The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares<sup>SM</sup>, Nasdaq-100 Trust<sup>SM</sup>, Nasdaq-100 Index Tracking Stock<sup>SM</sup>, and QQQ<sup>SM</sup> are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Phlx pursuant to a license agreement with Nasdaq. The Nasdaq-100 Index® ("Index") is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust<sup>SM</sup>, or the beneficial owners of Nasdaq-100 Shares<sup>SM</sup>. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

<sup>15</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> See Securities Exchange Act Release No. 52834 (November 25, 2005), 70 FR 72492.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's