

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51038; File No. SR-PCX-2004-96]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Amend PCXE Rule 4.5 To Require All Financial/Operations Principals of PCXE ETP Firms to Successfully Complete the Series 27 Examination and To Add PCXE Rule 6.18(d) To Require All Compliance Supervisors of PCXE ETP Firms To Successfully Complete the Series 24 Examination

January 14, 2005.

On October 20, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its subsidiary, PCX Equities, Inc. ("PCXE"), 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 proposed rule change to amend PCXE Rule 4.5 to require all financial/operations principals of PCXE ETP Firms to successfully complete the National Association of Securities Dealers, Inc.'s ("NASD") Financial and Operations Principal Examination ("Series 27 Examination"), and to add PCXE Rule 6.18(d) to require all compliance supervisors of PCXE ETP Firms to successfully complete NASD's General Securities Principal Examination ("Series 24 Examination"). The proposed rule change was published for comment in the **Federal Register** on December 14, 2004.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

Among other things the proposed rule change establishes a requirement that each Electronic Trading Permit ("ETP") holder subject to Securities Exchange Act Rule 15c3-1<sup>4</sup> designate a Financial/Operations Principal ("FINOP") and that the FINOP pass the Series 27 Examination. It also requires supervisory personnel to pass the Series 24 Examination and if the person subject to the Series 24 requirement also does business with the public that person must pass the General Securities Sales Supervisor Qualification Examination ("Series 9/10").

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the

rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, in particular, the requirements of Section 6 of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals 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. The Commission believes that requiring all financial/operations principals of PCXE ETP Firms to successfully complete the Series 27 Examination ensures that individuals who prepare the financial statements of PCXE ETP Firms will meet uniform qualifications to prepare such statements. The Commission also finds that requiring all compliance supervisors of PCXE ETP Firms to successfully complete the Series 24 Examination ensures that those who are supervising equities trading be uniformly qualified. The Commission notes that the proposed rule change gives PCXE the authority to waive all or a portion of the Series 24 Examination requirements pursuant to PCXE Rule 6.18(d). In evaluating whether to grant a full or partial waiver from the examination requirements, PCXE represents that it will review a number of factors including but not limited to the individual's industry experience, education, previous registration history with the Exchange and other examinations taken by the individual that may be acceptable substitutes in conjunction with securities industry experience. The Commission expects that PCXE will carefully evaluate the criteria when determining whether to grant a full or partial waiver, and will do so only for those candidates whose qualifications have been satisfactorily demonstrated, and for whom granting a waiver is consistent with protecting investors and the public interest.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-PCX-2004-96) be, and it hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-254 Filed 1-21-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51036; File No. SR-Phlx-2004-92]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating To Adopting Phlx Rule 1017, Openings in Options, on a Permanent Basis

January 13, 2005.

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 15, 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 and II below, which Items have been prepared by Phlx. On December 28, 2004, Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On January 12, 2005, Phlx filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the

<sup>10</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> Amendment No. 1 replaced the original proposed rule change in its entirety.

<sup>4</sup> In Amendment No. 2, Phlx proposes to clarify the specialist's requirement to give precedence to orders entrusted to him as an agent in any option in which he is registered. Specifically, Phlx represents that the specialist is required to give precedence to orders entrusted to him as an agent in any option in which he is registered before executing at: (i) The same price; (ii) a lower bid; or (iii) a higher offer, any purchase or sale in the same option for an account in which he has an interest. The Exchange's Market Surveillance Department conducts surveillance for violations of this requirement. Therefore, if a specialist intends to trade for his own account on the opening, the specialist must first be sure that he does not trade ahead of any orders (as agent). Otherwise, he would be subject to possible disciplinary action, regardless of when such an order is received (*i.e.*, in this circumstance, after the underlying security opens but prior to the opening in the underlying security). See, *e.g.*, Phlx Rule 1019.

<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. 50818 (December 7, 2004), 69 FR 74558.

<sup>4</sup> 17 CFR 240.15c3-1.

proposed rule change, as amended, on an accelerated basis.

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

Phlx proposes to adopt, on a permanent basis, Phlx Rule 1017, Openings in Options, which is currently subject to a 180-day pilot scheduled to expire January 28, 2005. The text of the proposed rule change is available at the principal office of the Exchange 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, Phlx included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received. The text of these statements may be examined at the places specified in Item III below. 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

In July 2004, the Commission approved the Exchange's proposal to adopt rules applicable to the Exchange's electronic trading platform for options, Phlx XL.<sup>5</sup> Among the rules approved was Phlx Rule 1017, which describes in detail the process for openings in options on the Exchange. Phlx Rule 1017, which was approved on pilot basis, addresses the opening process in three main parts: the pre-opening, the opening rotation, and the specialist's calculation of the price of the opening trade of the session in a given series. The purpose of this proposed rule change, as amended, is to assure the continuity of the Exchange's rules relating to openings by adopting Phlx Rule 1017 on a permanent basis.

Phlx Rule 1017 is intended to provide for an orderly and efficient process for the opening of an option and for re-opening following a trading halt. First, the sections of Phlx Rule 1017 concerning pre-openings are intended to describe which orders and quotes the specialist in a particular option is required to accept and consider prior to

the opening in a given series and when the specialist must accept and include market orders in the opening. Specifically, prior to the opening, the specialist determines from Floor Brokers, and from orders resting on the limit order book, the size and prices of orders which are near the previous closing prices of those options in which the specialist is assigned. Also, in addition to establishing the specialist's own quote in the series, the specialist considers markets from Registered Options Traders ("ROTs") in the crowd and, respecting Streaming Quote Options traded on Phlx XL, considers electronic quotations submitted by Streaming Quote Traders ("SQTs"). This enables the specialist to ascertain orders and quotes on both sides of the market for a series to determine the opening price for that series.

Because openings on the Exchange are not currently automated, there is no "broadcast" of opening limit orders and quotes on the Phlx XL. The participants, however, have access to market information necessary to ascertain bids and offers in the pre-opening phase. Specialists are able to view the entire limit order book, including orders resting on the book from the previous trading session and any orders submitted before the opening, on their on-floor screens (known as the X-Station). Specialists are also able to view all electronically submitted quotes in Phlx XL options. SQTs have the same view of the limit order book and their own quotes but not those of other SQTs. Non-SQT ROTs are able to view the current on-floor displayed market, whether generated by a pre-opening quote or by limit orders at the then-best bid or offer. All in-crowd SQTs and the specialist, together with non-SQT ROTs in the crowd, are able to ascertain all in-crowd verbal bids and offers. Following the pre-opening phase, the specialist conducts an opening rotation.<sup>6</sup>

Phlx Rule 1017 provides that the opening price is the price at which the specialist determines that the greatest number of contracts will trade, as long as such opening price falls within an acceptable range to be determined by the Exchange's Options Committee.<sup>7</sup> An

<sup>6</sup> A trading rotation is a series of very brief time periods during each of which bids, offers, and transactions in only a single, specified option contract can be made. See Phlx Rule 1047, Commentary .01.

<sup>7</sup> The Options Committee has general supervision of the dealings of members on the equity and index options trading floor, and of the premises of the Exchange immediately adjacent thereto, and has supervision of the activities on the equity and index options trading floor of specialists, assistant specialists, registered option traders, floor brokers,

acceptable range is determined as a percentage of the lowest bid as the lower boundary of the acceptable range and as a percentage of the highest offer as the upper boundary of the acceptable range. For example, such an acceptable range may be established as 75% of the lowest bid and 125% of the highest offer. Once determined by the Exchange's Options Committee, such an acceptable range would be announced to the Exchange's membership via regulatory circular.<sup>8</sup> The Exchange believes that the establishment of such bright-line parameters defining an acceptable opening price range provides specialists with clear guidance on the amount by which the opening price may differ from the lowest bid and highest offer. In the interest of a fair and orderly market, a Floor Official may provide a specific exemption from the established acceptable range in a particular series.

Commentary .03(b) to Phlx Rule 1017 includes further limitations on the opening price to be determined by the specialist. First, if two or more prices would satisfy the criteria for determining the opening price, the price which would leave the fewest number of contracts resting on the limit order book is selected as the opening price. If there are still two or more prices that would satisfy such criteria, the price which is closest to the previous session's closing price is selected as the opening price. Complex orders and contingency orders do not participate in opening rotations or in the determination of an opening price.

Once the specialist determines the opening price, the Exchange disseminates the opening trade price to the Option Price Reporting Authority ("OPRA"). At this point, the series is open for trading. Once the opening trade price in a series has been disseminated to OPRA, the specialist, ROTs, and SQTs trading such series are required to fulfill their respective quoting obligations under Phlx Rule 1014.

The rule also includes circumstances in which a specialist would not open a series. Specifically, the specialist would not open a series if it is not within an acceptable range, as described above, unless a specific exemption is given by a Floor Official in the interest of a fair and orderly market, or the opening trade would leave a market order imbalance (*i.e.*, there are more market orders to buy or to sell for the particular series than can be satisfied by the market orders,

or other types of market-makers. See Phlx By-Law Article X, Section 10-20.

<sup>8</sup> This provision in the proposed rule is based on Chicago Board Options Exchange, Inc. ("CBOE") Rule 6.2B(e)(ii).

<sup>5</sup> See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003-59).

limit orders, and specialist or SQT quotations on the opposite side). For purposes of this provision, "market orders" include those limit orders that are treated as market orders in accordance with Phlx Rule 1017(b) (*i.e.*, orders at a limited price order to buy which is at a higher price than the price at which the option is to be opened and a limited price order to sell which is at a lower price than the price at which the option is to be opened) and market-on-opening orders. In such a circumstance, the specialist requests bids and offers from ROTs in the crowd and, in the case of Streaming Quote Options, from SQTs that are assigned in the option. Such ROTs and/or SQTs are required to respond to such a request immediately. The series could not open until responses to the specialist's request have been received and the consequent opening price is deemed by a Floor Official to be compatible with a fair and orderly market.

Finally, Phlx Rule 1017 addresses the situation in which there are no orders in a particular series when the underlying security opens. In such a situation the Exchange would disseminate quotations in such series via the Exchange's Auto-Quote or Specialized Quote Feed upon the opening in the underlying security.

Phlx Rule 1017 was adopted as a 180-day pilot, which is scheduled to expire on January 28, 2005.<sup>9</sup> The proposal would adopt Phlx Rule 1017 on a permanent basis by deleting Phlx Rule 1017(f), which describes the pilot. The Exchange represents that it has received no negative comments or complaints since the Commission's approval of the pilot.

## 2. Statutory Basis

The Exchange believes that its proposal, as amended, is consistent with Section 6(b) of the Act<sup>10</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>11</sup> in particular in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by establishing permanent rules relating to openings on the Exchange that provide for an orderly and efficient process for the opening of an option, and for re-opening following a trading halt.

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

The Exchange does not believe that the proposed rule change, as amended,

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amended 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-Phlx-2004-92 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-Phlx-2004-92. 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 the filing also will be available for inspection and copying at the principal office of the Phlx. 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-Phlx-2004-92 and should

be submitted on or before February 14, 2005.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,<sup>12</sup> and, in particular, with the requirements of Section 6(b) of the Act<sup>13</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act<sup>14</sup> in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade.

Specifically, the Commission believes that the proposed rule change establishes permanent rules governing the opening procedures on options that should provide a reasonable process by which Phlx participants would access and participate in the opening rotations and re-opening following a trading halt. The Commission also believes that the proposed rules governing the opening procedures on options should provide transparency to all market participants with respect to the manner in which an opening price is determined on the Exchange.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission notes that the Exchange represents that it has received no negative comments or complaints since the Commission approved the Phlx XL opening procedures on a pilot basis. Further, accelerating approval of the instant proposed rule change will ensure that the Phlx XL opening procedures will continue to operate without any undue interruption when the pilot period ends on January 28, 2005.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the

<sup>12</sup> In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> See *supra*, note 5.

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

proposed rule change and Amendments No. 1 and 2 thereto (SR-Phlx-2004-92) are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E5-217 Filed 1-21-05; 8:45 am]

BILLING CODE 8010-01-P

## SMALL BUSINESS ADMINISTRATION

### Senior Executive Service: Performance Review Board Members

**AGENCY:** Small Business Administration.  
**ACTION:** Notice of members for the FY 04 Performance Review Board.

**SUMMARY:** Section 4314(c)(4) of Title 5, U.S.C.; requires each agency to publish notification of the appointment of individuals who may serve as members of that Agency's Performance Review Board (PRB). The following individuals have been designated to serve on the FY 04 Performance Review Board for the U.S. Small Business Administration:

1. Lewis D. Andrews, Jr., Associate Deputy Administrator for Management and Administration;
2. Anthony Bedell, Associate Administrator for Congressional and Legislative Affairs;
3. Delorice Ford, Assistant Administrator for the Office of Hearings and Appeals;
4. Janet Tasker, Associate Administrator for the Office of Lender Oversight;
5. Jose Sifontes, Office of the District Director—New York District Office;
6. Jerry E. Williams, Deputy Chief Information Officer; and,
7. Herbert Mitchell, Associate Administrator for the Office of Disaster Assistance.

Dated: January 14, 2005.

**Hector V. Barreto,**  
*Administrator.*

[FR Doc. 05-1188 Filed 1-21-05; 8:45 am]

BILLING CODE 8025-01-P

## DEPARTMENT OF STATE

[Public Notice 4959]

### Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Partnerships for Learning (P4L) Afghanistan Global Connections and Exchange Program

*Announcement Type:* New Grant.

*Funding Opportunity Number:* ECA/PE/C/PY-05-27.

*Catalog of Federal Domestic Assistance Number:* 00.000.

*Key Dates: Application Deadline:* March 17, 2005.

*Executive Summary:* The Youth Programs Division, Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for the P4L Afghanistan Global Connections and Exchange program. The Bureau will award one grant. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) and public institutions may submit proposals to select Afghanistan schools and provide them with access to the Internet and related training to develop collaborative school partnerships with U.S. schools. Thematic online projects will enhance learning, research and cross-border communication among participating schools. Organizations with less than four years of experience in conducting international exchange programs are not eligible for this competition.

#### I. Funding Opportunity Description

*Authority:* Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries \* \* \*; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations \* \* \* and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

*Purpose:* The P4L Afghanistan Global Connections and Exchange program is designed to introduce youth and communities to a broad range of ideas and resources while enhancing the use of information technology in schools. Through this program, Afghanistan secondary schools and communities will expand computer literacy skills, improve general education, and gain a deeper understanding of U.S. society, culture and values. They will also increase their capacity to generate change through programs that foster tolerance and mutual respect, and enhance grassroots community

participation. American students will in turn gain a greater understanding of Afghanistan culture and society. The goals of the program are:

- Enhance general education by providing access to information via the Internet;
- Increase and improve education tools, resources and learning through the application of information technology, complementary teacher training, online resource development, school partnerships, and student collaboration;
- Increase the number of students who qualify for exchange and academic study opportunities in the U.S. by providing them with the necessary skills;
- Enhance community capacity and youth activism via Internet access and related training;
- Generate personal and institutional ties across borders among students, educators, and their schools;
- Ensure the sustainability of information technology and Internet access in schools partnered under this grant.

*Guidelines:* Applicants should identify specific objectives and measurable outcomes based on program goals and project specifications provided in the solicitation.

#### II. Award Information

*Type of Award:* Grant Agreement.  
*Fiscal Year Funds:* FY 2005.  
*Approximate Total Funding:* \$300,000.

*Approximate Number of Awards:* One grant will be awarded.

*Anticipated Award Date:* Pending availability of funds, April 2005.

*Anticipated Project Completion Date:* April 2007.

*Additional Information:* The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional years before openly competing it again.

#### III. Eligibility Information

##### III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

##### III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this

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