

securities for which they are registered for each Market Order Auction.<sup>11</sup> The Exchange proposes to allow Market Makers to submit Cleanup Orders at their discretion. As the Cleanup Orders are only utilized during Market Order Auction (when there is an imbalance of order), as well as for the reasons stated above, the impact on the system from removing this requirement would be minimal on the ArcaEx.

The Exchange believes eliminating the aforementioned requirements will facilitate additional Market Maker participation on ArcaEx and will further enhance order interaction, provide greater depth in liquidity, and foster price competition. Moreover, the Exchange believes that the elimination of such requirements will place ArcaEx on a level playing field with other market centers and allow ArcaEx to fairly compete for Market Maker participation.

## 2. Statutory Basis

The PCX believes that the rule change is consistent with section 6(b) of the Act in general<sup>12</sup> and section 6(b)(5) of the Act in particular.<sup>13</sup> The Exchange believes that the proposed rule change is intended 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.

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

The proposed rule change does not 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 Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## 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**

makers registered in the relevant security and executed against such market makers' Cleanup Orders. If no Imbalance exists at the time of the Market Order Auction, all Cleanup Orders would be cancelled at that time.

<sup>11</sup> See PCXE Rule 7.35(c) for a discussion of the Market Order Auction process.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

**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 amended 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. 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-2003-59. 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 Room. Copies of such 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-2003-59 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

<sup>14</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48936; File No. SR-PCX-2003-32]

### Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change to Incorporate New PCX Rules Into Its Minor Rule Plan

December 17, 2003.

On July 8, 2003, the Pacific Stock Exchange, Inc. ("PCX" 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> a proposed rule change to adopt new PCX Rules 10.13(h)(40)-(44) and 10.13(k)(i)(40)-(44) in order to incorporate five existing PCX rules into the Minor Rule Plan and Recommended Fine Schedule.

The proposed rule change was published for comment in the **Federal Register** on November 12, 2003.<sup>3</sup> The Commission received no comments on the proposal.

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>4</sup> and, in particular, the requirements of section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(6)<sup>6</sup> of the Act because it should enable the Exchange to appropriately discipline its members and others associated with its members for violation of the provisions of this title, the rules or regulations thereunder, or the rules of the Exchange.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Exchange's minor rule violation plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in

<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. 48746 (November 4, 2003), 68 FR 64182.

<sup>4</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>5</sup> 15 U.S.C. 78f.

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

addressing certain violations, the Exchange's minor rule violation plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the PCX will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Exchange's minor rule violation plan, on a case by case basis, or if a violation requires formal disciplinary action.

In addition, the Commission notes that proposed rules 10.13(h)(40), 10.13(h)(41), and 10.13(h)(43) relate to market making obligations. The Commission believes that only the most technical and non-substantive violations of a market maker's obligations should be handled pursuant to a minor rule plan.<sup>7</sup>

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-PCX-2003-32) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-31808 Filed 12-24-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48947; File No. SR-Phlx-2003-81]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Pilot Program To Deploy the Options Floor Broker Management System

December 18, 2003.

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 December 17, 2003, 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 and to approve the proposal, on an accelerated basis.

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

The Exchange proposes to extend its pilot program pertaining to the Options Floor Broker Management System (the "System") from November 14, 2003, until February 6, 2004.<sup>3</sup> The System is a new component of the Exchange's Automated Options Market (AUTOM) and Automatic Execution (AUTO-X) System.<sup>4</sup>

#### 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 III 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 extend the effectiveness of the rules governing the System beyond the current effective date of November 14, 2003, in order to continue to have rules in place concerning the System and to ensure that Floor Brokers using the System during the continuing deployment would not be in violation of current Exchange rules regarding ticket marking requirements. The rules had previously been effective through August 29, 2003, extended through September 12, 2003, and extended again through November 14, 2003.<sup>5</sup>

The System is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. Floor Brokers or their employees access the System through an electronic Exchange-provided handheld device on which they have the ability to enter the required information as set forth in Phlx Rule 1063(e), either from their respective posts on the options trading floor or in the trading crowd. The System will eventually replace the Exchange's current Floor Broker Order Entry System ("FBOE"),<sup>6</sup> as part of a roll-out of the new System floor-wide.

All of the rules pertaining to the System effective November 14, 2003 are proposed to be extended until February 6, 2004, including: Exchange Rules 1014(g), 1015, 1051, 1063, 1064, and 1080.06, as well as Option Floor Procedure Advices ("Advice") A-11, B-6, B-8, C-2, C-3, F-1, F-2, and F-4.

The Exchange believes that the System will enable Floor Brokers to handle orders they represent more efficiently, and will further enable the Exchange to comply with the audit trail requirement for non-electronic orders required under the Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the

<sup>3</sup> On July 31, 2003, the Exchange filed a proposed rule change to implement a pilot program to deploy the Exchange's new System. The proposed rule change was noticed, and accelerated approval was granted thereto, on July 31, 2003. The pilot was scheduled to expire on August 29, 2003. See Securities Exchange Act Release No. 48266 (July 31, 2003), 68 FR 152 (August 7, 2003) (SR-Phlx-2003-56). On August 29, the Commission extended the pilot to September 12, 2003. See Securities Exchange Act Release No. 48425 (August 29, 2003), 68 FR 53210 (September 9, 2003) (SR-Phlx-2003-60). On September 12, 2003, the Commission extended the pilot again until November 14, 2003. See Securities Exchange Act Release No. 48490 (September 12, 2003), 68 FR 54926 (September 19, 2003). In order to avoid a lapse in the effectiveness of this pilot, the Commission now is approving the Exchange's proposal to extend the rule from November 14, 2003 until February 6, 2004. The Exchange has also filed for permanent approval of the proposed rules. See Securities Exchange Act Release No. 48265 (July 31, 2003), 68 FR 47137 (August 7, 2003) (SR-Phlx-2003-40). The Exchange acknowledges that SR-Phlx-2003-40 and Amendment No. 1 thereto are subject to public comment, which may result in amendments to the proposed rules.

<sup>4</sup> AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. See Exchange Rule 1080.

<sup>5</sup> See note 3, *supra*.

<sup>6</sup> See Securities Exchange Act Release No. 41524 (June 14, 1999), 64 FR 33127 (June 21, 1999) (SR-Phlx-99-11). The FBOE, a component of AUTOM, currently provides a means for (but does not require) Floor Brokers to route eligible orders to the specialist's post, consistent with the order delivery criteria of the AUTOM System set forth in Exchange Rule 1080(b). The new System would include the same functionality as the FBOE, in addition to providing an electronic audit trail for non-electronic orders received by Floor Brokers by way of the entry of the required information in proposed Phlx Rule 1063(e).

<sup>7</sup> See, e.g., Securities Exchange Act Release No. 27878 (April 14, 1990), 55 FR 13345, [SR-NYSE-89-44].

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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.