

options on SPDRs similarly be subject to position limits and exercise limits of 300,000 contracts. The Exchange believes that increasing position limits and exercise limits for SPDR options would lead to a more liquid and competitive market environment for SPDR options that would benefit customers interested in this product.

Consistent with the reporting requirement for QQQ options, the Exchange would require that each Options Participant<sup>5</sup> that maintains a position on the same side of the market in excess of 10,000 contracts in the SPDR option class, for its own account or for the account of a customer, report certain information.<sup>6</sup> This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts would remain at this level for SPDR options.<sup>7</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act<sup>8</sup> in general, and Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, 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 would impose any burden on competition 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 neither solicited nor received comments on the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

<sup>5</sup> Defined in Section 1(40) of Chapter I of the BOX Rules.

<sup>6</sup> See Section 10(b) of Chapter III of the BOX Rules.

<sup>7</sup> See Section 10(a) of Chapter III of the BOX Rules.

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

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

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-BSE-2005-05 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-BSE-2005-05. 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 Section. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. 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-BSE-2005-05 and should be submitted on or before February 22, 2005.

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

After careful review, 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>10</sup> and, in particular,

<sup>10</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

the requirements of Section 6(b)(5) of the Act.<sup>11</sup> Specifically, the Commission finds that the proposed rule change should ensure that the Exchange's position limits and exercise limits on SPDR options provide its members with sufficient flexibility to participate in the market for such options in a manner that should provide greater depth and liquidity for all market participants.

The Commission finds good cause for approving this proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. Specifically, the Commission believes that granting accelerated approval to the proposed rule change should permit greater depth and liquidity in the SPDR options market that should benefit all market participants, including retail investors. Because the higher position limits and exercise limits mirror those that the Commission has previously approved for like products, the Commission believes it is consistent with Sections 6(b)(5)<sup>12</sup> and 19(b)(2)<sup>13</sup> of the Act to approve the BSE's proposed rule change on an accelerated basis.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-BSE-2005-05) is hereby approved on an accelerated basis.

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

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. E5-361 Filed 1-31-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51076; File No. SR-PCX-2004-125]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

January 25, 2005.

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

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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

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

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

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 21, 2004, the Pacific Exchange, Inc. ("PCX" 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. On January 12, 2005, the Exchange filed Amendment No. 1 to the proposed rule change. On January 13, 2005, the Exchange filed Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend its Schedule of Fees and Charges For Exchange Services ("Schedule") in order to eliminate the Shortfall Fee and corresponding Shortfall Credit and the Designated Options Examining Authority ("DOEA") fee, add a clarifying change to the \$500 application fee for a request for a waiver pursuant to PCX Rule 2.5(c)(4) and make certain administrative changes. The text of the proposed rule change is available on the Exchange's Web site ([http://www.pacificex.com/legal/legal\\_pending.html](http://www.pacificex.com/legal/legal_pending.html)), at the Exchange'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 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 Exchange is proposing to amend its Schedule in order to eliminate the Shortfall Fee, as well as the corresponding Shortfall Credit, and the DOEA fee, add a clarifying change to the

\$500 application fee for a request for a waiver pursuant to PCX Rule 2.5(c)(4) and make certain administrative changes.

#### **The Shortfall Fee and Credit**

The "Shortfall Fee" is a fee that is charged on the volume difference between 12% of the total national market share in an option issue for one month and the percentage executed by the Lead Market Maker ("LMM"). The current Shortfall Fee is \$0.35 per contract. An LMM is currently entitled to a "Shortfall Credit" of \$0.35 per contract for any top 120 equity option issues the LMM trades where the PCX volume in the issue is higher than 12% of the scaled national volume in that issue for that month. The volume base for the Shortfall Credit is the PCX monthly volume for the issue less 12% of the scaled monthly industry volume for each qualifying issue. The Shortfall Credit may be used by an LMM only to offset a Shortfall Fee the LMM incurs for the same month and may not be used to offset other fees, or be carried forward or applied retroactively to the Shortfall Fee the LMM has incurred or will incur for other months. For the purpose of calculating the Shortfall Fee, the national market share of any equity option industry volume is capped at 2.9 million contracts per day. Shortfall Fee billing commences after an issue completes the first four full months of trading under an LMM.

The Exchange is proposing to eliminate the Shortfall Fee and the corresponding Shortfall Credit in their entirety. The Exchange believes that the elimination of the Shortfall Fee is appropriate in order to make the PCX more competitive and to add liquidity to the marketplace. The Exchange intends to provide all LMMs with a rebate for fees paid in the months of October and November 2004.

#### **DOEA Fee**

Previously, the PCX contracted with the NASD to conduct all DOEA examinations for the Exchange. The Exchange would pass along the cost of the examination plus 17% to the entity that was examined. NASD has stopped providing this service to the Exchange, and the Exchange no longer monitors any firms that require DOEA examinations. Accordingly, the Exchange is proposing to eliminate the DOEA fee from the Schedule.

\$500 Application Fee for a Request for a Waiver Pursuant to PCX Rule 2.5(c)(4)

The Exchange's Shareholder and Registration Services Department has received numerous questions about the

application of the \$500 application fee for a request for a waiver pursuant to PCX Rule 2.5(c)(4). Option Trading Permit Holders ("OTP Holders") and applicants have expressed a desire for further clarification as to the circumstances under which they would be subject to the fee. The purpose of the fee is to allow the Exchange to recover costs associated with independently verifying each justification given by an applicant as to why a waiver should be granted.<sup>3</sup> The fee does not apply to circumstances where the Exchange only has to verify that an applicant has successfully completed an examination. Therefore, the Exchange is proposing to add clarifying language to the Schedule that states the fee does not apply when the request only involves validating that an applicant has successfully completed a qualifying examination.

#### **Administrative Changes**

The Exchange is proposing certain changes to the Schedule that will eliminate typographical errors, correct grammatical errors and amend calendar references. In addition, the Exchange is proposing certain clarifying language that is designed to make the Schedule easier to comprehend. Specifically, the Exchange is clarifying that for the Vendor Equipment Room Usage Fee, firms not using a full cabinet will not pay the full fee. Instead such firms will pay a pro rata portion thereof.

#### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>5</sup> in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees and other charges among the Exchange's OTP Holders and other persons using the Exchange's facilities for trading option contracts.

#### **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.

<sup>3</sup> See Securities Exchange Act Release No. 50742 (November 29, 2004), 69 FR 70488 (December 6, 2004) (SR-PCX-2004-101).

<sup>4</sup> 15 U.S.C. 78f(b).

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

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

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

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and Rule 19b-4(f)(2) thereunder,<sup>7</sup> because the proposed rule change establishes or changes a due, fee or other charge applicable only to a member of the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.<sup>8</sup>

**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-2004-125 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-2004-125. 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 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-2004-125 and should be submitted on or before February 22, 2005.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. E5-360 Filed 1-31-05; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51080; File No. SR-Phlx-2004-51]

**Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to Phlx Regulation 5, Visitors and Applicants**

January 26, 2005.

On October 7, 2004, 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> a proposed rule change to update Phlx Regulation 5, Visitors and Applicants, enacted as a rule of order and decorum under Phlx Rule 60. On December 6, 2004, Phlx filed Amendment No. 1 to the proposed rule

change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on December 22, 2004.<sup>4</sup> The Commission received no comments on the proposal.

Phlx is amending its Phlx Regulation 5 to more accurately reflect its current practices. The Exchange amended Phlx Regulation 5 in 1992 to create an "applicant" status for prospective Exchange members.<sup>5</sup> A person who fell into the applicant category was issued an Applicant Access Card and Floor Badge that would allow for unescorted floor access until the application process was complete. Phlx no longer issues such Applicant Access Cards and Floor Badges to applicants, but instead requires applicants to register as on-floor trading personnel pursuant to Phlx Rule 620(b), Trading Floor Registration. Applicants are now issued the same access cards as are issued to Phlx members, and their access to the floor is governed by Phlx Rule 620(b), rather than Regulation 5. Phlx proposes to return Regulation 5 to its pre-1992 wording, which governs only guest access to the floor. Phlx members who do not adhere to the procedures set forth in Regulation 5 would be subject to sanction.

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>6</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act<sup>7</sup> because ensuring that unauthorized persons do not have improper access to the Exchange floor is consistent with the protection of investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-Phlx-2004-51), as amended, be, and it hereby is, approved.

<sup>3</sup> Amendment No. 1 replaced the original filing in its entirety. Amendment No. 1 clarified that violations of Regulation 5 would be enforced against members and not the guests themselves, and added a description for the Applicant Access Card.

<sup>4</sup> See Securities Exchange Act Release No. 50851 (December 14, 2004), 69 FR 76816.

<sup>5</sup> See Securities Exchange Act Release No. 30416 (February 26, 1992), 57 FR 7836 (March 4, 1992) (approving File No. SR-Phlx-91-06).

<sup>6</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on January 13, 2005, the date the Exchange filed Amendment No. 2 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

<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.