

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>8</sup> that the proposed rule change (SR-NASD-2004-089) be, and it hereby is, approved, as amended.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52206; File No. SR-PCX-2005-59]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 3 Thereto Relating to Amendments to the Exchange's Trade-Through and Locked Markets Rules

August 4, 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 April 27, 2005, the Pacific Exchange, Inc. ("PCX") 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 PCX. The PCX filed Amendment No. 1 to the proposed rule change on July 8, 2005.<sup>3</sup> The PCX filed Amendment No. 2 to the proposed rule change on July 29, 2005 and withdrew Amendment No. 2 on August 1, 2005. The PCX filed Amendment No. 3 to the proposed rule change on August 1, 2005.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

<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.

<sup>3</sup> See Form 19b-4 dated July 8, 2005

("Amendment No. 1"). In Amendment No. 1, the PCX revised the rule text to use terms consistent with PCX's current rules and made clarifying changes in the purpose and statutory basis sections.

<sup>4</sup> See Partial Amendment dated August 1, 2005 ("Amendment No. 3"). In Amendment No. 3, the PCX made clarifying changes to the rule text and the purpose section.

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

The PCX is proposing to codify the "trade and ship" and "book and ship" concepts pursuant to the Intermarket Option Linkage Plan ("Plan"). The text of the proposed rule change is available on the PCX's Web site (<http://www.pacificex.com>), at the PCX'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 PCX 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 PCX 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 provide that: (i) A Participant Exchange may trade an order at a price that is one minimum quoting increment inferior to the National Best Bid or Offer ("NBBO") if a Linkage Order<sup>5</sup> is transmitted to the NBBO market(s) to satisfy all interest at the NBBO price (this is the "trade and ship" concept); and (ii) a Participant Exchange may book an order that would lock another Participant Exchange if a Linkage Order is sent to such other Participant Exchange to satisfy all interest at the lock price (this is the "book and ship" concept). Under the trade and ship proposal, any execution received from the NBBO market must (pursuant to agency obligations) be reassigned to the customer order that is underlying the Linkage Order that was transmitted to "take out" the NBBO market. Below are examples illustrating the applications of these concepts:

Trade and Ship Example. Participant Exchange A is disseminating an offer of \$2.00 for 100 contracts. Participant Exchange B is disseminating the national best offer of \$1.95 for 10 contracts. No other market is at \$1.95. Participant Exchange A receives a 100-contract customer buy order to pay

\$2.00. Under this proposal, Participant Exchange A could execute 90 contracts (or 100 contracts) of the customer order at \$2.00 provided Participant Exchange A simultaneously transmits a 10-contract Principal Acting as Agent ("P/A")<sup>6</sup> Order to Participant Exchange B to pay \$1.95. Assuming an execution is obtained from Participant Exchange B, the customer would receive the 10-contract fill at \$1.95 and 90 contracts at \$2.00 (if the customer order was originally filled in its entirety at \$2.00, an adjustment would be required to provide the customer with the \$1.95 price for 10 contracts reflecting the P/A Order execution). As proposed, this would not be deemed a Trade-Through.

Book and Ship Example. Participant Exchange A is disseminating a \$1.85-\$2.00 market. Participant Exchange B is disseminating a \$1.80-\$1.95 market. The \$1.95 offer is for 10 contracts. No other market is at \$1.95. Participant Exchange A receives a customer order to buy 100 contracts at \$1.95. Under this proposal, Participant Exchange A could book 90 contracts of the customer buy order at \$1.95 provided Participant Exchange A simultaneously transmitted a 10-contract P/A Order to Participant Exchange B to pay \$1.95. Assuming an execution is obtained from Participant Exchange B, the customer would receive the 10-contract fill and the rest of the customer's order will be displayed as a \$1.95 bid on Participant Exchange A. The national best offer would likely be \$2.00. As proposed, this would not be deemed a "locked" market for purposes of the Plan.

##### 2. Statutory Basis

The PCX believes 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 the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles 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.

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

The PCX does not believe that the proposed rule change will impose any burden on competition that is not

<sup>6</sup> See PCX Rule 6.92(a)(12)(i).

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

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

<sup>5</sup> See PCX Rule 6.92(a)(12).

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**

Within 35 days of the date of publication of this notice in the **Federal 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 PCX 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 proposed rule change, as amended, 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-2005-59 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2005-59. 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, 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 PCX. 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-2005-59 and should be submitted on or before September 1, 2005.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52220; File No. SR-Phlx-2005-49]

**Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Impose Licensing Fees in Connection With the Firm-Related Equity Option and Index Option Fee Cap**

August 5, 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 July 28, 2005, 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, II, and III below, which items have been prepared by the Exchange. Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) 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 Substance of the Proposed Rule Change**

The Phlx proposes to amend its schedule of fees to adopt a license fee of \$0.10 for options traded on the following products:<sup>5</sup> (1) Keefe, Bruyette & Woods Regional Banking Index or the KBW Regional Banking Index, traded under the symbol KRX, and (2) Keefe, Bruyette & Woods Mortgage Finance Index or the KBW Mortgage Finance Index, traded under the symbol MFX (collectively "KBW products"), to be assessed per contract side for index option "firm" transactions (comprised of index option firm/proprietary comparison transactions, index option firm/proprietary transactions and index option firm/proprietary facilitation transactions). This license fee will be imposed only after the Exchange's \$60,000 "firm-related" equity option and index option comparison and transaction charge cap, described more fully below, is reached.

Currently, the Exchange imposes a cap of \$60,000 per member organization<sup>6</sup> on all "firm-related" equity option and index option comparison and transaction charges combined.<sup>7</sup> Specifically, "firm-related" charges include equity option firm/proprietary comparison charges, equity option firm/proprietary transaction charges, equity option firm/proprietary facilitation transaction charges, index option firm/proprietary comparison charges, index option firm/proprietary transaction charges, and index option firm/proprietary facilitation transaction charges (collectively "firm-related charges"). Thus, such firm-related charges in the aggregate for one billing month may not exceed \$60,000 per month per member organization.

<sup>5</sup> This fee will be charged to Exchange members.

<sup>6</sup> The firm/proprietary comparison or transaction charge applies to member organizations for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customers. Member organizations are required to verify this amount to the Exchange by certifying that they have reached this threshold by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). In the event that a member organization has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, are accepted. See Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (SR-Phlx-2000-85).

<sup>7</sup> See Securities Exchange Act Release No. 51024 (January 11, 2005), 70 FR 3088 (January 19, 2005) (SR-Phlx-2004-94).

<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.

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

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