

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-NYSE-2005-45 and should be submitted on or before August 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

Release No. 34-52060; File No. SR-PCX-2005-71]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Relating to Complex Orders on the PCX Plus System

July 19, 2005.

#### I. Introduction

On June 7, 2005, the Pacific Exchange, Inc. ("PCX") 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 to create a Complex Trading Engine ("CTE") to facilitate more automated handling of complex options orders. On June 14, 2005, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on June 27, 2005.<sup>4</sup> The Commission received no comments regarding the proposal. This order

grants accelerated approval to the proposed rule change, as amended.

#### II. Description of the Proposed Rule Change

Complex options orders involve multiple options transactions that are executed simultaneously as part of a single strategy. The PCX currently routes complex orders to the Electronic Order Capture System ("EOC"), which is a function of the Floor Broker Hand Held System. Orders on the trading floor are announced by a Floor Broker to the trading crowd and trade in open outcry. As an enhancement to the PCX Plus system, the Exchange intends to develop a CTE, which will facilitate more automated handling of complex orders. Additionally, the Exchange proposes to adopt a separate complex order rule applicable solely to the PCX Plus system.<sup>5</sup>

Complex Orders on PCX Plus will route either to the EOC or the CTE, as determined by the Exchange.<sup>6</sup> Orders from public customers and registered broker-dealers are eligible to be routed to the CTE.<sup>7</sup> The PCX will announce routing decisions to OTP Holders and OTP Firms via Regulatory Bulletin.<sup>8</sup>

When a complex order routes to the EOC, the Floor Broker will announce the order to the trading crowd, which may trade with the order at its limit price or offer price improvement. If the trading crowd chooses not to trade with the order, the order will reside on the EOC or be entered into the CTE, at the Floor Broker's discretion. Any complex order represented by a Floor Broker will be subject to PCX Rule 6.46(a).<sup>9</sup>

When an order is routed directly into the CTE, the order may trade in one of three ways. First, if individual orders or quotes in the Exchange's consolidated book "line-up" against the legs of the complex order, an automatic execution occurs, provided the complex order can be executed in full (or in a permissible ratio) by the orders in the consolidated book. Second, if a subsequent incoming complex order is marketable against a resting complex order in the CTE, it will

<sup>5</sup> The following types of complex orders, as defined in PCX Rule 6.91(a), will be eligible for routing to the CTE: Spread orders; straddle orders; strangle orders; combination orders; ratio orders; butterfly spread orders; box/roll spread orders; and collar orders and risk reversals. Only complex orders with no more than four legs are eligible for the CTE. See PCX Rule 6.91(c)(4). Conversions and reversals will not be eligible for routing to the CTE. See PCX Rule 6.91, Commentary .01.

<sup>6</sup> See PCX Rule 6.91(c)(1).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> PCX Rule 6.46(a) requires a Floor Broker handling an order to use due diligence to execute the order at the best price or prices available to him, in accordance with the rules of the PCX.

automatically execute against the resting complex order in the CTE. Third, OTP Holders and OTP Firms will have the ability to view orders in the CTE and submit orders to trade against those orders.

A complex order in the CTE will be allocated to market participants in accordance with the allocation procedures described in PCX Rule 6.76(b). In addition, PCX Rule 6.76(c), which deals with crossing orders on PCX Plus, will apply to orders in the CTE.<sup>10</sup>

Complex orders resting in the CTE may be executed without consideration to the prices of the same complex orders that might be available on other exchanges.<sup>11</sup> Orders of public customers in the CTE will have priority over orders from non-public customers, and multiple public customer complex orders at the same price will be accorded priority based on time.<sup>12</sup>

PCX Rule 6.75(e) and PCX Rule 6.75, Commentary .04 generally allow a member holding a complex order to trade ahead of the book on one leg of the order, provided that the other leg of the order betters the corresponding bid (offer) in the consolidated order book. These rules will continue to apply to the trading of complex orders.

#### III. Discussion

The Commission has carefully reviewed the proposed rule change and 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>13</sup> In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and

<sup>10</sup> PCX Rule 6.76(c) prohibits an order entry firm from executing as principal against an order it represent as agent unless: (1) The agency order is first exposed on the Exchange for at least 30 seconds; (2) the PCX Broker utilizes the Crossing Mechanism pursuant to PCX Rule 6.76(c)(2); or (3) the PCX Broker executes the orders pursuant to PCX Rule 6.47.

<sup>11</sup> See PCX Rule 6.91(c)(2). The Options Price Reporting Authority does not disseminate complex order prices. This provision of the PCX's proposal is similar to International Securities Exchange Rule 722(b)(3) and CBOE Rule 6.53(c)(iii).

<sup>12</sup> See PCX Rule 6.76(a)(A).

<sup>13</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>6</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> In Amendment No. 1, the PCX revised Exhibit 5 to the proposal to add underscoring that was inadvertently deleted from the text of proposed PCX Rule 6.91(b).

<sup>4</sup> See Securities Exchange Act Release No. 51885 (June 20, 2005), 70 FR 36995.

open market, and, in general, to protect investors and the public interest.

A complex order sent to the PCX currently routes to and resides on the EOC until it trades in open outcry. Thus, a complex order currently cannot be executed on the PCX without manual intervention by a Floor Broker.

The CTE will allow complex orders to trade electronically, without the intervention of a Floor Broker. OTP Holders and OTP Firms will use an electronic interface to the PCX to view complex orders resting in the CTE. As described more fully above, a complex order routed to the CTE may execute automatically against orders in the Exchange's consolidated book or against an order resting in the CTE. In addition, OTP Holders and OTP Firms may trade against orders resting in the CTE. Accordingly, the Commission believes that the CTE should increase the transparency of complex orders and could facilitate the execution of complex orders.

Under the proposal, the Exchange will determine which options classes will route directly to the CTE and those that will route to the EOC. The Commission notes that PCX Rule 6.76(c) applies to complex orders on PCX Plus.<sup>15</sup> Accordingly, an OTP Holder or OTP Firm seeking to trade with its customer's complex order, or to cross complex orders, would be required to comply with PCX Rule 6.76(c).

In addition, the complex order priority provisions in PCX Rule 6.75(e) and PCX Rule 6.75, Commentary .04, will continue to apply to complex orders. Accordingly, complex orders will be able to trade ahead of orders in the consolidated book only under the conditions specified in PCX Rule 6.75(e) and PCX Rule 6.75, Commentary .04. The Commission also notes that complex orders from public customers will have priority over complex orders from non-public customers.<sup>16</sup>

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the proposal is similar to a Chicago Board Options Exchange, Inc. ("CBOE") proposal that the Commission approved.<sup>17</sup> Accelerated approval of the PCX's proposal may help the PCX to compete for complex orders. Accordingly, the Commission finds good cause, consistent with Sections

6(b)(5) and 19(b) of the Exchange Act, to approve the proposed rule change, as amended, on an accelerated basis.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-PCX-2005-71), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52054; File No. SR-Phlx-2005-40]

#### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Impose a New Licensing Fee in Connection With the Firm-Related Equity Option and Index Option Fee Cap

July 18, 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 June 7, 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. On July 5, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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>4</sup> and

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> In Amendment No. 1, the Exchange made non-substantive changes to re-format a defined term and clarify the addition of disclaimer language in its \$60,000 "Firm Related" Equity Option and Index Option Cap schedule. The effective date of the original proposed rule change is June 7, 2005, and the effective date of Amendment No. 1 is July 5, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers such period to commence on July 5, 2005, the date on which the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

Rule 19b-4(f)(2) thereunder,<sup>5</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, as amended, 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>6</sup> (1) iShares S&P 100 Index, traded under the symbol OEF; (2) iShares S&P Europe 350, traded under the symbol IEV; (3) iShares S&P Global 100 Index, traded under the symbol IOO; (4) iShares S&P Global Energy Sector Index, traded under the symbol IXC; (5) iShares S&P Global Financial Sector Index, traded under the symbol IXG; (6) iShares S&P Global Healthcare Sector Index, traded under the symbol IXJ; (7) iShares S&P Global Information Technology Sector Index, traded under the symbol IXN; (8) iShares S&P Global Telecom Sector Index, traded under the symbol IXP; (9) iShares S&P Latin America 40, traded under the symbol ILF; (10) iShares S&P MidCap 400, traded under the symbol IJH; (11) iShares S&P SmallCap 600, traded under the symbol IJR; (12) iShares S&P TOPIX 150, traded under the symbol ITF; (13) iShares S&P 500, traded under the symbol IVV; (14) S&P Industrial Select Sector SPDR, traded under the symbol XLI; (15) S&P Technology Select Sector SPDR, traded under the symbol XLK; (16) S&P Utilities Select Sector SPDR, traded under the symbol XLU; (17) S&P Consumer Staples Select Sector SPDR, traded under the symbol XLP; (18) S&P Energy Select Sector SPDR, traded under the symbol XLE; (19) S&P Financial Select Sector SPDR, traded under the symbol XLF; (20) S&P Health Care Select Sector SPDR, traded under the symbol XLV; (21) S&P Materials Select Sector SPDR, traded under the symbol XLB; (22) S&P Consumer Discretionary Select Sector SPDR, traded under the symbol XLY; (23) MidCap SPDR, traded under the symbol MDY (collectively, the "S&P products"); and (24) WellSpring Bio-Clinical Trials

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> The Exchange represents that this fee will be charged only to Exchange members. Telephone conversation between Cynthia Hoekstra, Director, Phlx, and Edward Cho, Attorney, Division of Market Regulation ("Division"), Commission (July 7, 2005).

<sup>15</sup> See note 10, *supra*.

<sup>16</sup> See PCX Rule 6.76(a)(A).

<sup>17</sup> See Securities Exchange Act Release No. 51271 (February 28, 2005), 70 FR 10712 (March 4, 2005) (SR-CBOE-2004-45).