

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")¹ and Rule 19b-4 thereunder,² 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, 2004.³ 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 15c3-1⁴ 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 exchange⁵ and, in particular, the requirements of Section 6 of the Act⁶ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ 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,⁹ that the

⁵ 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).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 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.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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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")¹, and Rule 19b-4 thereunder,² 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.³ On January 12, 2005, Phlx filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced the original proposed rule change in its entirety.

⁴ 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50818 (December 7, 2004), 69 FR 74558.

⁴ 17 CFR 240.15c3-1.