

Pursuant to Rule 19b-4(f)(6)(iii) under the Act,<sup>11</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX has asked the Commission to waive the 30-day operative delay and the five day pre-filing notice requirement. Because the proposed rule change is based upon a recently approved rule change by the Chicago Board Options Exchange, Incorporated (“CBOE”),<sup>12</sup> and the CBOE’s proposed rule change was published for public notice and comment, the Commission believes that waiving the 30-day operative delay, as well as the five day pre-filing notice requirement, is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>13</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-2005-129 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-PCX-2005-129. 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 such filing also will be available for inspection and copying at the principal offices 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-2005-129 and should be submitted on or before January 4, 2006.

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

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52920; File No. SR-PCX-2005-112]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Revisions to the Series 4 Examination Program

December 7, 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 November 3, 2005, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX. On November 22, 2005, PCX filed Amendment No. 1 to the proposed rule change. PCX has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the

meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) 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, as amended, from interested persons.

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

PCX is filing revisions to the study outline and selection specifications for the Limited Principal—Registered Options (Series 4) examination program. The proposed revisions update the material to reflect changes to the laws, rules, and regulations covered by the examination, as well as modify the content of the examination program to track more closely the functional workflow of a Series 4 limited principal. PCX is not proposing any textual changes to the PCX Rules. The revisions that PCX is submitting with this filing supersede all prior revisions to the Series 4 examination program submitted by PCX.

The revised study outline is available on PCX’s Web site (<http://www.pacificex.com>), at PCX, and at the Commission. However, PCX has omitted the Series 4 selection specifications from this filing and has submitted the specifications under separate cover to the Commission with a request for confidential treatment pursuant to Rule 24b-2 under the Act.<sup>5</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, 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. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> See Securities Exchange Act Release Nos. 52562 (October 4, 2005), 70 FR 59382 (October 12, 2005) (notice for SR-CBOE-2004-37) and 52779 (November 16, 2005), 70 FR 70902 (November 23, 2005) (approval order for SR-CBOE-2004-37).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</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)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> 17 CFR 240.24b-2.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Pursuant to Section 6(c)(3) of the Act,<sup>6</sup> which allows PCX to examine and verify the standards of training, experience, and competence for persons associated with PCX Options Trading Permit ("OTP") Holders or OTP Firms, PCX has developed examinations, and requires satisfaction of examinations developed by other SROs, that are designed to establish that persons associated with PCX OTP Holders or OTP Firms have attained specified levels of competence and knowledge. PCX periodically reviews the content of examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

PCX Rule 9.18 states that no OTP Firm or OTP Holder shall be approved to transact business with the public in options contracts, unless those persons associated with the OTP Firm or OTP Holder who are designated as Options Principals or who are designated as Registered Representatives have been approved by and registered with the Exchange. The Series 4 examination, an industry-wide examination, qualifies an individual to function as a Registered Options and Security Futures Principal, but only for purposes of supervising an OTP Holder's or OTP Firm's options activities.<sup>7</sup> The Series 4 examination tests a candidate's knowledge of options trading generally, the industry rules applicable to trading of option contracts, and the rules of registered clearing agencies for options. The Series 4 examination covers, among other things, equity options, foreign currency options, index options, and options on government and mortgage-backed securities.

The Series 4 examination program is shared by PCX and the following SROs: the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the New York Stock Exchange, Inc., the National Association of Securities Dealers, Inc., and the Philadelphia Stock Exchange, Inc.

A committee of industry representatives, together with the staff of the PCX and the other SROs, recently

<sup>6</sup> 15 U.S.C. 78f(c)(3).

<sup>7</sup> A Registered Options and Security Futures Principal also must complete a firm-element continuing education program that addresses security futures and a principal's responsibilities for security futures before such person can supervise security futures activities.

undertook a periodic review of the Series 4 examination program. As a result of this review and as part of an ongoing effort to align the examination more closely to the supervisory duties of a Series 4 limited principal, PCX is proposing to modify the content of the examination to track the functional workflow of a Series 4 limited principal. More specifically, PCX is proposing to revise the main section headings and the number of questions on each section of the Series 4 study outline as follows: Options Investment Strategies, decreased from 35 to 34 questions; Supervision of Sales Activities and Trading Practices, increased from 71 to 75 questions; and Supervision of Employees, Business Conduct, and Recordkeeping and Reporting Requirements, decreased from 19 to 16 questions. PCX is further proposing revisions to the study outline to reflect the SEC short sale requirements. The revised examination continues to cover the areas of knowledge required to supervise options activities.

PCX is proposing these changes to the entire content of the Series 4 examination, including the selection specifications and question bank. The number of questions on the Series 4 examination will remain at 125, and candidates will continue to have three hours to complete the exam. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

2. Statutory Basis

PCX believes that the proposed revisions to the Series 4 examination program are consistent with Section 6(b) of the Act,<sup>8</sup> in general, and further the objectives of Section 6(b)(1)<sup>9</sup> in particular, in that it is designed to enforce compliance by OTP Holders and OTP Firms and persons associated with the rules of the Exchange.

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

PCX does not believe that the proposed rule change, as amended, will result in 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*

Written comments were neither solicited nor received.

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

<sup>9</sup> 15 U.S.C. 78f(b)(1).

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

The proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>10</sup> and Rule 19b-4(f)(1) thereunder,<sup>11</sup> in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. PCX will announce the implementation date in a Rule Adoption Notice to be published no later than 7 days after Notice of this filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>12</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, 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-2005-112 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-2005-112. 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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>11</sup> 17 CFR 240.19b-4(f)(1).

<sup>12</sup> The effective date of the original proposed rule is November 3, 2005. The effective date of Amendment No. 1 is November 22, 2005. 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 the period to commence on November 22, 2005, the date on which PCX submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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 such 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-2005-112 and should be submitted on or before January 4, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52903; File No. SR-Phlx-2005-67]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Maintenance, Retention and Furnishing of Books, Records and Other Information Regarding Payment For Order Flow

December 7, 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 November 3, 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 November 22, 2005, the Phlx submitted Amendment No. 1 to the

proposed rule change.<sup>3</sup> 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 Phlx Rule 760, Maintenance, Retention and Furnishing of Books, Records and Other Information, to incorporate recent changes to the Exchange's payment for order flow program.

The Exchange recently amended its payment for order flow program for trades settling on or after October 1, 2005 ("October program").<sup>4</sup> Registered Options Traders who receive electronically-delivered orders directed to them ("Directed ROTs") may, pursuant to the October program, direct the Exchange to make payments to order flow providers on their behalf.<sup>5</sup> Thus, the Exchange proposes to amend Phlx Rule 760 to clarify that these Directed ROTs would now be required to retain records relating to payment for order flow arrangements.<sup>6</sup>

The text of Rule Phlx 760, as proposed to be amended, is set forth below with new language in *italics* and deletions in [brackets].

#### Rule 760

Maintenance, Retention and Furnishing of Books, Records and Other Information

Every member and member organization shall make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Securities Exchange Act of 1934 and the rules and regulations thereunder. No member or member organization shall refuse to make available to the Exchange such books, records or other information as may be called for under the rules or as may be requested in connection with an investigation by the Exchange.

Supplementary Material: \* \* \*

<sup>3</sup> Amendment No. 1 provided clarifying language to Phlx Rule 760 and the purpose section of the filing.

<sup>4</sup> The October program is in effect as a pilot program that is scheduled to expire on May 27, 2006. See Securities Exchange Act Release No. 52568 (October 6, 2005), 70 FR 60120 (October 14, 2005) (SR-Phlx-2005-58).

<sup>5</sup> The Exchange represents that under previous payment for order flow programs, specialist units requested reimbursement from the Exchange for monies they paid to order flow providers. Pursuant to the October program, the available payment for order flow funds would be disbursed by the Exchange according to the instructions of the specialist units and Directed ROTs.

<sup>6</sup> The Exchange represents that specialists/specialist units are already specifically required to maintain these books and records.

.01 Without limiting the general provisions of Rule 760, such Rule requires *Registered Options Traders who receive electronically-delivered orders directed to them*, Specialists [or] and Specialist Units who request *that payments be made* [funds, or who make payments] to order flow providers as part of the Exchange's payment for order flow program, to make, keep current and preserve all books and records relating to payment for order flow arrangements, including but not limited to all records pertaining to the identity of the order flow providers, [and] the [origin, use, transfer, distribution and] *rates, and the basis for the amounts they have directed the Exchange to pay to order flow providers* [of all payments] (whether on a per contract or flat fee basis). [Such records should be maintained in such a fashion as to permit the Exchange to track payments to order flow providers on an option by option basis.] Such books and records shall be made available as may be requested by the Exchange.

#### 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 states that the purpose of this proposal is to update Phlx Rule 760 to reflect recent changes to the Exchange's payment for order flow program, specifically including that Directed ROTs must now retain records relating to payment for order flow arrangements. The Exchange proposes to amend the Supplementary Material to Phlx Rule 760 because the Exchange's current payment for order flow program no longer tracks payments to order flow providers on an option by option basis. In addition, the Exchange notes that specialists and specialist units no longer need to maintain records relating to the use, transfer, and distribution of payment for order flow funds because

<sup>13</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.