

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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2002-169 and should be submitted by January 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47010; File No. SR-PCX-2002-74]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to New Order Types Called "IOC Cross Orders" and "PNP Cross Orders" and Amending PCXE Rule 7.37

December 16, 2002.

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 9, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which the PCX has prepared. 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 PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, by: (1) Adopting two new order types, an Immediate-or-Cancel ("IOC") Cross Order and a Post No Preference ("PNP") Cross Order; and (2) amending PCXE

Rule 7.37 to provide for a limited exemption from the trade-through restrictions for these new order types. The text of the proposed rule change is below. Proposed new text is italicized and proposed deleted text is bracketed.

PCX Equities, Inc.—Rule 7: Equities Trading

Orders and Modifiers

Rule 7.31(a)-(x)—No change.

(y)-(z)—Reserved.

(aa) *Immediate-or-Cancel ("IOC") Cross Order. An IOC Cross Order is an order that is to be executed in its entirety as a cross transaction as soon as such order is received; provided, however, the Corporation will cancel an IOC Cross Order at the time of order entry if:*

(1) *the cross price locks or crosses the BBO; or*

(2) *the cross price would cause an execution at a price that trades through the NBBO, except as provided in Rule 7.37; or*

(3) *the cross price is between the BBO and does not improve the BBO by the MPII pursuant to Rule 7.6(a), Commentary .06.*

(bb) *PNP (Post No Preference) Cross Order. A Cross Order that is to be executed in whole or in part on the Corporation and the portion not so executed is to be canceled, without routing any portion of the Cross Order to another market center. When the cross price is equal to or better than the NBBO and is at the BBO, the relevant portion of the PNP Cross Order will be matched first against displayed orders with priority in the Arca Book, and then the remainder of the PNP Cross Order will be matched. Any unexecuted portion of the PNP Cross will be canceled. The Corporation will cancel either the entire PNP Cross Order at the time of order entry, or the unexecuted portion of a PNP Cross Order at any time during the order execution process, whichever is applicable, if:*

(1) *the cross price would cause an execution at a price that trades through the NBBO, except as provided in Rule 7.37;*

(2) *the cross price is between the BBO and does not improve the BBO by the MPII pursuant to Rule 7.6(a), Commentary .06.*

* * * * *

Order Execution

Rule 7.37. Subject to the restrictions on short sales under Rule 10a-1 under the Exchange Act, like-priced orders, bids and offers shall be matched for execution by following Steps 1 through 5 in this Rule; provided, however, for an

execution to occur in any Order Process, the price must be equal to or better than the NBBO, unless the Archipelago Exchange has routed orders to away markets at the NBBO, where applicable (however, a User may submit a NOW Order or Primary Only Order that may be routed to an away market without consideration of the NBBO). This rule will not apply to *designated order types including IOC, NOW, PNP, IOC Cross and PNP Cross orders in securities that are subject to an exemption from the Commission under SEC Rule 11Aa3-2(f) to the trade-through provisions of the ITS Plan ("ITS Trade-Through Exempt Securities")*. Orders in ITS Trade-Through Exempt Securities [designated as IOC, NOW and PNP orders] will be effected at a price no more than three cents (\$0.03) away from the best bid and offer quoted in CQS.

(a)-(e)—No change.

* * * * *

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 had 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

As part of its continuing efforts to enhance participation on the ArcaEx facility, the PCX is proposing to adopt two new order types called an "IOC Cross Order" and a "PNP Cross Order." The PCX believes that these new order types will provide ETP Holders³ and Sponsored Participants⁴ (collectively "Users") with more flexibility to facilitate cross transactions. The PCX is also proposing to amend PCXE Rule 7.37 so that these new order types will be subject to the SEC's *de minimis* exemption from the trade-through restrictions of the Intermarket Trading

³ See PCXE Rule 1.1(n).

⁴ A "Sponsored Participant" means "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29." See PCXE Rule 1.1(tt).

²² 27 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² CFR 240.19b-4.

System ("ITS") Plan in certain exchange-traded funds ("ETFs").⁵

The PCX proposes to add PCXE Rule 7.31(aa) to define an IOC Cross Order. An IOC Cross Order is an order that is to be executed in its entirety as a cross transaction as soon as the order is received; provided, however, the ArcaEx trading system would cancel an IOC Cross Order at the time of order entry if: (i) The cross price locks or crosses the BBO; (ii) the cross price would cause an execution at a price that trades through the NBBO, except as provided in Rule 7.37 described below; or (iii) the cross price is between the BBO and does not improve the BBO by the minimum price improvement increment ("MPII") pursuant to Rule 7.6(a), Commentary .06.⁶ The PCX believes that IOC Cross Orders will help replicate the dynamic of a traditional floor-based auction market by which brokers may represent orders with a cross-only contingency. Furthermore, the PCX believes that this order type responds to the needs of market participants that use indexation strategies.

The PCX also proposes to add PCXE Rule 7.31(bb) to define a PNP Cross Order. A PNP Cross Order is a Cross Order⁷ that is to be executed in whole or in part on ArcaEx and the portion not so executed is to be canceled, without routing any portion of the Cross Order to another market center. When the cross price is equal to or better than the NBBO and is at the BBO, the relevant portion of the PNP Cross Order would be matched first against displayed orders with priority in the ArcaEx Book,⁸ and then the remainder of the PNP Cross Order would be matched. Any unexecuted portion of the PNP Cross Order would be canceled. The ArcaEx trading system would cancel either the entire PNP Cross Order at the time of order entry, or the unexecuted portion of a PNP Cross Order at any time during the order execution process,

⁵ See Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002).

⁶ The minimum price improvement increment ("MPII") on ArcaEx is equal to \$0.01 or 10% of the NBBO spread, whichever is greater. See PCXE Rule 7.6(a), Commentary .06. Under current PCXE rules, the MPII requirements must be satisfied in the execution of Cross Orders. See PCXE Rule 7.31(s).

⁷ See PCXE Rule 7.31(s) (definition of a "Cross Order").

⁸ ArcaEx maintains an electronic file of orders, called the ArcaEx Book, through which orders are displayed and matched. The ArcaEx Book is divided into four components, called processes—the Directed Order Process, the Display Order Process, the Working Order Process, and the Tracking Order Process. See PCXE Rule 7.37 for a detailed description of these order execution processes.

whichever is applicable, if: (i) The cross price would cause an execution at a price that trades through the NBBO, except as provided in Rule 7.37; or (ii) the cross price is between the BBO and does not improve the BBO by the MPII.

The PCX's current rules governing the order execution processes for orders in the ArcaEx Book are set forth in PCXE Rule 7.37. Currently, Rule 7.37 provides, in part, that for an execution to occur in any Order Process, the price must be equal to or better than the NBBO. The requirements of this Rule do not apply to orders designated as IOC, NOW, and Post No Preference ("PNP") in securities that are subject to an exemption from the trade-through provisions of the ITS Plan pursuant to Rule 11Aa3-2(f) under the Act;⁹ provided, however, that any resulting executions will be at a price no more than three cents (\$0.03) away from the NBBO displayed in the Consolidated Quote. Accordingly, the PCX proposes to amend PCXE Rule 7.37 so that IOC Cross and PNP Cross Orders will be subject to the SEC's exemption.

The PCX believes that the implementation of the aforementioned order types will facilitate enhanced order interaction and foster price competition. The proposal also promotes a more efficient and effective market operation, and enhances the investment choices available to investors over a broad range of trading scenarios. Finally, the PCX believes that the proposed rule changes will permit the execution of cross transactions in a manner consistent with PCXE rules applicable to price-time priority, price improvement requirements, and NBBO price protection.

The PCX believes that the proposed rule change is consistent with section 6(b) of the Act,¹⁰ in general, and further the objectives of section 6(b)(5),¹¹ in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and to protect investors and the public interest. In addition, the PCX believes that the proposed rule change is consistent with provisions of section 11A(a)(1)(B) of the Act,¹² which states that new data processing and communications techniques create the

opportunity for more efficient and effective market operations.

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 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 PCX 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

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 self-regulatory organization 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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the PCX. All submissions should refer to File No. SR-PCX-2002-74 and should be submitted by January 8, 2003.

⁹ 17 CFR 240.11Aa3-2(f).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78k-1(a)(1)(B).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47016; File No. SR-SCCP-2001-12]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Extending Approval of Restructured and Limited Clearing Services

December 17, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 17, 2001, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") and on November 26, 2002, amended the proposed rule change as described in items I and II below, which items have been prepared primarily by SCCP. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal through December 31, 2002.

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

SCCP proposes to extend for a one year period ending December 31, 2003, the Commission's approval of its providing limited clearance and settlement services. Specifically, SCCP seeks to continue to provide trade confirmation and recording services for members of the Philadelphia Stock Exchange, Inc. ("Phlx") effecting transactions through Regional Interface Operations ("RIO") and ex-clearing accounts. SCCP will also continue to provide margin accounts to certain participants whose transactions are cleared through an account established by SCCP at the National Securities Clearing Corporation ("NSCC").²

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

In its filing with the Commission, SCCP 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. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.³

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

The purpose of the proposed rule change is to obtain Commission approval of SCCP's restructured and limited clearance and settlement business for an additional one year period ending December 31, 2003. In an agreement dated as of June 18, 1997, ("Agreement") by and among the SCCP, Phlx, Philadelphia Depository Trust Company ("Philadep"), NSCC and The Depository Trust Company ("DTC"), SCCP and Philadep agreed to certain provisions, including that: (i) Philadep would cease providing securities depository services; (ii) SCCP would make available to its participants access to the facilities of one or more other organizations providing depository services; (iii) SCCP would make available to SCCP participants access to the facilities of one or more other organizations providing securities clearing services; and (iv) SCCP would transfer to the books of such other organizations the CNS system open positions of SCCP participants on the books of SCCP.

In December 1997, the Commission approved proposed rule changes which gave effect to this Agreement and which reflected Philadep's withdrawal from the depository business and SCCP's restructured and limited clearance and settlement business.⁴ In that approval order, the Commission stated, "However, because a part of SCCP's proposed rule change concerns the restructuring of SCCP's operations to enable SCCP to offer limited clearing and settlement services to certain Phlx members, the Commission finds that it is appropriate to grant only temporary approval to the portion of SCCP's

proposed rule change that amends SCCP's By-Laws, Rules, or Procedures. This will allow the Commission and SCCP to see how well SCCP's restructured operations are functioning under actual working conditions and to determine whether any adjustments are necessary. Thus, the Commission is approving the portion of SCCP's proposal that amends its By-Laws, Rules, and Procedures through December 31, 1998." Subsequent to that approval, one-year extensions of such approval have been granted by the Commission to continue SCCP's restructured and limited clearance and settlement services.⁵

SCCP is hereby requesting an additional one year extension of such approval noting that such extension is appropriate in order that SCCP may continue to provide services to its participants. SCCP believes that its restructured operations have functioned consistent with the original proposed rule change, and SCCP will continue to evaluate whether any adjustments are necessary.

In the original proposed rule change and order temporarily approving SCCP's restructured business, many SCCP rules were amended and discussed at length. No new rule changes are proposed at this time. Thus, the purpose of the proposed rule change is to extend the effectiveness of SCCP's restructured business.

SCCP believes that the extension of the Commission's temporary approval to permit SCCP's continued operation of its restructured and limited clearance and settlement services is consistent with the requirements of the Act and the rules and regulations thereunder applicable to SCCP and in particular with section 17A(b)(3)(F) which requires that a clearing agency be organized and its rules be designed, among other things, to promote the prompt and accurate clearance and settlement of securities transactions. SCCP believes that the extension of SCCP's restructured business should promote the prompt and accurate clearance and settlement of securities transactions by integrating and consolidating clearing services available to the industry.

⁵ Securities Exchange Act Release Nos. 40872 (December 31, 1998), 64 FR 1264 (January 8, 1999) (SR-SCCP-98-05); 42320 (January 6, 2000), 65 FR 2218 (January 13, 2000) (SR-SCCP-99-04); 43781 (December 28, 2000), 66 FR 1167 (January 5, 2001) (SR-SCCP-00-05), and 45227 (January 3, 2002), 67 FR 1259 (January 9, 2002) (SR-SCCP-2001-11).

³ The Commission has modified the text of the summaries prepared by SCCP.

⁴ Securities Exchange Act Release No. 39444 (December 11, 1997), 62 FR 66703 (December 19, 1997) (SR-SCCP-97-04).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² See SCCP rule 1.