

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 NYSE.

All submissions should refer to File No. SR-NYSE-2002-54 and should be submitted by December 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

J. Lynn Taylor,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46784; File No. SR-PCX-2002-68]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend Its Schedule of Fees and Charges To Increase the User Transaction Credit for Certain Transactions in American Depositary Receipts

November 7, 2002.

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 October 8, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 5, 2002, the Exchange filed 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 Exchange through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its fee schedule to increase the user transaction credit for ETP Holders and Sponsored Participants who provide liquidity in exchange-listed American Depositary Receipts ("ADRs") that are traded on the Archipelago Exchange, the equities trading facility of PCXE. The text of the proposed rule change is available at the Exchange and at the Commission.

#### 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 purpose of the proposed rule change is to amend the Exchange's fee schedule by increasing the level of the transaction credit paid to ETP Holders<sup>4</sup> and Sponsored Participants<sup>5</sup> (collectively "Users") who provide liquidity in exchange-listed ADRs that are traded on the Archipelago Exchange ("ArcaEx").

Currently, Users who provide liquidity in ADRs by entering into the ArcaEx Book<sup>6</sup> resting limit orders that are subsequently executed against incoming marketable orders, earn a credit of \$0.001 per share. The Exchange proposes to increase the level of the transaction credit for ADRs from \$0.001

to \$0.002 per share. The increased credit of \$0.002 is the same amount that is currently applied to orders that provide liquidity in Exchange-Traded Funds. This credit is intended to create additional incentives to Users to provide liquidity in ADRs that are traded on the ArcaEx facility.

###### 2. Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and Section 6(b)(4)<sup>8</sup> of the Act in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The Exchange 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

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

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>10</sup> At any time within 60 days of the filing of such 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.

#### 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. 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

<sup>12</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 Letter from Peter D. Bloom, Director, Policy Development, PCX to Rebekah Liu, Special Counsel, Division of Market Regulation, Commission, dated November 5, 2002. In Amendment No. 1, the Exchange corrected the fee schedule attached as Exhibit A to the rule filing to accurately reflect that existing underlined text would be double-underlined. Amendment No. 1 contained no substantive changes to the fee schedule.

<sup>4</sup> See PCXE Rule 1.1(n).

<sup>5</sup> 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).

<sup>6</sup> 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 Rules 7.36 and 7.37 for a detailed description of these order execution processes.

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-2002-68 and should be submitted by December 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46789; File No. SR-Phlx-2002-71]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 and Amendment No. 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Maintenance Listing Criteria for Underlying Securities in Phlx Rule 1010 and Original Listing Criteria for Underlying Securities in Phlx Rule 1009

November 7, 2002.

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 October 31, 2002, 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 the Phlx. On November 5, 2002, Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On November 6, 2002, Phlx

filed Amendment No. 2 to the proposed rule change.<sup>4</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 Commentaries .01 and .02 to Phlx Rule 1010 to allow the Exchange to list additional options series where the underlying security satisfies all of the maintenance listing requirements other than the underlying security trading at \$3.00 per share of the underlying security, the series the Exchange wants to list is traded on at least one other registered national securities exchange, and at the time the other exchange listed the series the underlying security was trading at \$3.00 or more.

The Exchange proposes to amend Commentary .01 to Phlx Rule 1009 to allow the Exchange to list an option on an underlying security that satisfies all of the initial listing requirements except the \$7.50 share price requirement,<sup>5</sup> as long as the option that the Exchange wants to list trades on another options exchange, meets continued listing guidelines, and during the three calendar months preceding the date of selection to originally list an option on the Exchange, the average daily trading volume for such options has been at least 5,000 contracts.

The Exchange also proposes to make non-substantive changes to Commentary .02 to Phlx Rule 1009 to indicate a change in the name of the department of the Exchange that will perform certain listing-related functions noted therein.

The text of the proposed rule change is below. Proposed new language is italicized; deleted language is in brackets.

Rule 1010. Withdrawal Of Approval Of Underlying Securities Rule 1010. No change.

Commentary:

related functions noted in Commentary .02 to Phlx Rule 1009. Specifically, the Exchange proposes to modify the language in Commentary .02 to Phlx Rule 1009 so that references to the Business and Operations Planning Department ("BOP") are changed to the Department of Securities ("DOS").

<sup>4</sup> See letter to Florence Harmon, Senior Special Counsel, Office of Market Supervision, Commission, from Jurij Trypupenko, Phlx, dated November 5, 2002 ("Amendment No. 2"). In Amendment No. 2, Phlx corrected a typographical error in Commentary .01 to Phlx Rule 1009 by changing "\$7½" to "\$7.50".

<sup>5</sup> Telephone call between Jennifer Lewis, Attorney, Division of Market Regulation, Commission, and Jurij Trypupenko, Phlx, on November 7, 2002.

.01 The Board of Governors has established guidelines to be considered by the Exchange in determining whether an underlying security previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Absent exceptional circumstances, with respect to items 1, 2, 3, or 4 listed below, an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever any of the following occur:

1. No change.
2. No change.
3. No change.

4. *Subject to Commentary .02 below, [T]the market price per share of the underlying security closed below \$3 on the previous trading day as measured by the highest closing price reported in the primary market in which the underlying security traded.*

5. No change.
6. No change.
7. No change.

.02 In connection with paragraph 4 of Commentary .01 above, the Exchange shall not open for trading any additional series of option contracts of the class covering an underlying security at any time when the market price per share of such underlying security is less than \$3 in the primary market in which it is traded *unless the additional series is traded on at least one other registered national securities exchange and at the time the additional series was listed by such other registered national securities exchange it met the \$3 market price requirement.* Subject to paragraph 4 of Commentary .01 above, the Exchange may open for trading additional series of option contracts of a class covering an underlying security when the market price per share of such underlying security is at or above \$3 at the time such additional series are authorized for trading. For purposes of this Commentary .02, the market price of such underlying security is measured by (i) for intra-day series additions, the last reported trade in the primary market in which the underlying security traded at the time the Exchange determines to add these additional series intra-day, and (ii) for next-day and expiration series additions, the closing price reported in the primary market in which the underlying security is traded on the last trading day before the series are added.

Commentary .03 to .10 No change.

Rule 1009. Criteria for Underlying Securities

- Rule 1009. (a) No change.
- (b) No change.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 7 CFR 240.19b-4.

<sup>3</sup> See letter to Florence Harmon, Senior Special Counsel, Office of Market Supervision, Commission, from Jurij Trypupenko, Phlx, dated November 1, 2002 ("Amendment No. 1"). In Amendment No. 1, Phlx clarified that another purpose of the proposal was to allow the Exchange to reflect a change in the name of the department of the Exchange that will perform certain listing-