

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52427; File No. SR-PCX-2005-104]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to the Definition of Firm Customer Quote Size and the Removal of Certain Restrictions on Sending Secondary Principal Acting as Agent Orders Pursuant to the Linkage Plan

September 14, 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 September 7, 2005, the Pacific Exchange, Inc. (“PCX” 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 PCX. 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 Exchange proposes to amend its rules governing the operation of the intermarket option linkage (“Linkage”) to conform with a proposed amendment<sup>3</sup> to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Linkage Plan”).<sup>4</sup> The Exchange is proposing to modify the definition of “Firm Customer Quote Size” (“FCQS”)<sup>5</sup> to provide automatic executions for Linkage Principal Acting as Agent Orders (“P/A Orders”)<sup>6</sup> up to the full size of the Exchange’s disseminated

quotation; and (ii) to eliminate a 15-second waiting period between the sending of P/A Orders.

The text of the proposed rule change is available on PCX’s Web site at <http://www.pacificex.com>, at the PCX’s Office of the Secretary, and at the Commission’s public reference room.

#### 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 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 modernize the definition of FCQS. At the time the Linkage commenced, options quote sizes were not disseminated through the Options Price Reporting Authority and most Linkage Plan participants (“Participants”) employed automatic execution systems that guaranteed automatic fills on orders under a certain contract size (which was generally a static number). As such, the FCQS was calculated based on the number of contracts the sending and receiving Participants guaranteed they would automatically execute. Now that all Participants disseminate dynamic quotes with size, the Participants believe that it is appropriate to calculate the FCQS based on the size of the disseminated quotation of the Participant receiving the P/A Order. Accordingly, the Participants submitted Amendment No. 16, and the Exchange is submitting herein a proposed rule change to amend the definition of FCQS, provided in PCX Rule 6.92(a)(9).<sup>7</sup> The other purpose of the proposed rule change is to eliminate a 15-second wait period for sending a secondary P/A Order pursuant to Exchange Rule 6.93. That Exchange Rule governs the manner in which a P/A Order larger

than the FCQS can be broken into smaller P/A Orders. It provides that an initial P/A Order can be sent to the National Best Bid or Offer (“NBBO”) market for the FCQS, and that if the NBBO market continues to disseminate the same price after 15 seconds from the execution of the initial P/A Order, a secondary P/A Order can be sent (for at least the lesser of (i) the size of the disseminated quote; (ii) 100 contracts; or (iii) the remainder of the customer order underlying the P/A Orders). The 15-second wait period is being eliminated because the dynamic quotes with size now employed by the Participants obviate the need for a manual quote refresh period for P/A Orders.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles 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.

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

The PCX does not believe that the proposed rule change would 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 were neither solicited nor received.

#### 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 PCX consents, the Commission will:

A. By order approve such proposed rule change; or

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 34-52401 (September 9, 2005) (File No. 4-429) (“Amendment No. 16”).

<sup>4</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option market linkage proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Incorporated, and International Securities Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon separate requests by the Philadelphia Stock Exchange, Inc., PCX and Boston Stock Exchange, Inc., the Commission issued orders to permit these exchanges to participate in the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000), 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000) and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>5</sup> See Exchange Rule 6.92(a)(10).

<sup>6</sup> See Section 2(16)(a) of the Linkage Plan and Exchange Rule 6.92(a)(12)(i).

<sup>7</sup> The Commission added to this sentence pursuant to a telephone conversation with PCX, as noted herein. Telephone call between Steven Matlin, Senior Counsel, PCX, and Tim Fox, Special Counsel, Commission on September 12, 2005.

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. 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-2005-104 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-2005-104. 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 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 publicly available. All submissions should refer to File Number SR-PCX-2005-104 and should be submitted on or before October 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52416; File No. SR-Phlx-2005-26]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto To Amend the Exchange's Trade-Through and Locked Markets Rules

September 13, 2005.

On April 26, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change 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> to implement Amendment No. 15 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage<sup>3</sup> by amending Phlx Rules 1083 and 1086 to add a "trade and ship" exception to the definition of "Trade-Through" and add a "book and ship" exception to the provision relating to locked markets, respectively. On July 21, 2005, the Phlx filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on August 5, 2005.<sup>5</sup> The Commission

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option linkage proposed by the American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, and the International Securities Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) ("Linkage Plan"). Subsequently, upon separate requests by the Phlx, the Pacific Exchange, Inc., and the Boston Stock Exchange, Inc., the Commission issued orders to permit these exchanges to participate in the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>4</sup> In Amendment No. 1, the Phlx revised the rule text to use terms consistent with Phlx's current rules and the Linkage Plan, and made clarifying changes in the description of the substance of the proposed rule change and the purpose and statutory basis sections.

<sup>5</sup> See Securities Exchange Act Release No. 52175 (July 29, 2005), 70 FR 45480.

received no comments on the proposal. This order approves the proposed rule change, as amended.

Under the proposed rule change, a Participant Exchange<sup>6</sup> could trade an order at a price that is one minimum quoting increment inferior to the national best bid or offer ("NBBO") if a Linkage Order<sup>7</sup> is sent contemporaneously to the market(s) disseminating the NBBO to satisfy all interest at the NBBO price. The proposed rule change also would provide that an Eligible Market Maker or other member may book an order that would otherwise lock another market if a Linkage Order is sent contemporaneously to such other market to satisfy all interest at the lock price and only the remaining portion of the order is booked. The Phlx proposes that, under trade and ship, any execution received from the market disseminating the NBBO must (pursuant to agency obligations) be reassigned to the customer order that is underlying the Linkage Order that was sent to trade with the market disseminating the NBBO.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>8</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should help to implement the Linkage Plan by facilitating the ability of Phlx's members to execute their customer orders in a timely manner and potentially could decrease the incidence of Trade-Throughs and locked markets.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-Phlx-2005-26) as amended, is approved.

<sup>6</sup> See Phlx Rule 1083(o).

<sup>7</sup> See Phlx Rule 1083(k).

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

<sup>9</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2).