

interested persons.³ On February 12, 2001, the Nasdaq withdrew the proposed rule change.⁴

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43986; File No. SR-PCX-01-10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to an Interim Intermarket Linkage Program

February 20, 2001.

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 February 6, 2001,^{3,4} 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. PCX filed the proposal pursuant to section 19(b)(3)(A) of the Act,⁵ and Rule 19b-4(f)(6) thereunder,⁶ which renders the proposal effective upon filing with the Commission.⁷ 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 is proposing to adopt a rule providing for the implementation of

"interim linkages" with other option exchanges.⁸

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 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

1. Purpose

The purpose of this proposed rule change is to implement certain aspects of an intermarket options linkage on an "interim" basis.⁹ This interim linkage would utilize existing systems to facilitate the sending and receiving of order flow between PCX market makers and their counterparts on the other option exchanges as an interim step towards development of a "permanent" linkage.

The Commission has approved a linkage plan that now includes all five option exchanges.¹⁰ The option exchanges continue to work towards implementation of this linkage. However, because the implementation may take a significant amount of time, the option exchanges have discussed implementing an "interim" linkage. Such a linkage would use the existing market infrastructure to route orders between market makers on the participating exchanges in a more efficient manner.

The key component of the interim linkage would be for the participating exchanges to open their automated customer execution systems, on a limited basis, to market maker orders. Specifically, market makers would be able to designate certain orders as "customer" orders, and thus would

receive automatic execution of those orders on participating exchanges.

This proposed rule would authorize the PCX to implement bilateral or multilateral interim arrangements with the other exchanges to provide for equal access between market makers on our respective exchanges. The Exchange currently anticipates that the initial arrangements would allow PCX Designated Lead Market Makers ("LMMs") and their equivalents on the other exchanges, when they are holding customer orders, to effectively send those orders to the other market for execution when the other market has a better quote. Such orders would be limited in size to the lesser of the size of the two markets' automatic execution size for customer orders.

All interim linkage orders must be "immediate or cancel" (that is, they cannot be placed on an exchange's limit order book), and a market maker may send a linkage order only when the other (receiving) market is displaying the national best bid or offer and the sending market is displaying an inferior price. This will allow a market maker to access the better price for its customer. In addition, if the interim linkage includes principal orders, it would allow market makers to attempt to "clear" another market displaying a superior quote. Any exchange participating in the interim linkage will implement heightened surveillance procedures to help ensure that their market makers send only properly-qualified orders through the linkage.

LMM participation in the interim linkage will be voluntary. Only when an LMM and its equivalent on another exchange believe that this form of mutual access would be advantageous will the exchanges employ the interim linkage procedures. The PCX believes that the interim linkage will benefit investors and will provide useful experience that will help the exchanges in implementing the full linkage.

2. Statutory Basis

The PCX believes that the proposed rule change meets the requirement of section 6(b)(5) under the Act¹¹ 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 regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in

³ Securities Exchange Act Release No. 43107 (Aug. 2, 2000), 65 FR 48771.

⁴ See letter from Peter R. Geraghty, Assistant General Counsel, Nasdaq, to John Polise, Senior Special Counsel, Division of Market Regulation, Commission, dated February 12, 2001.

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³⁻⁴ On February 9, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change. See letter from Michael Pierson, Vice President, Regulatory Policy, PCX, to John Roeser, Attorney, Division of Market Regulation, Commission, dated February 8, 2001 ("Amendment No. 1"). In Amendment No. 1, the PCX made technical changes to the proposed rule text.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

⁷ The Commission has agreed to waive the 5-day pre-filing notice requirement. See 17 CFT 240.19b-4(f)(6)(iii).

⁸ On January 30, 2001, the Commission approved similar proposals submitted by the Chicago Board Options Exchange, Inc. ("CBOE") and the International Securities Exchange LLC ("ISE"). See Securities Exchange Act Release No. 43904 (January 30, 2001), 66 FR 9112 (February 6, 2001).

⁹ Under the proposal, the interim linkage would be for a pilot period expiring on January 31, 2002.

¹⁰ See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000).

¹¹ 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter times as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ 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.¹⁴

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 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 will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-01-10 and should be submitted by March 20, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43972; File No. SR-Phlx-00-48]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Telephone Use on the Options Floor

February 15, 2001.

I. Introduction

On June 16, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to 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 establishing rules on telephone use on the options floor. The Exchange filed Amendment No. 1 to the proposed rule change on December 1, 2000.³ The **Federal Register** published the proposed rule change, as amended, for comment on December 28, 2000.⁴ The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of Proposal

The Phlx proposes to amend Exchange Rule 606 to establish rules and procedures for telephone use on the

Phlx's options floor.⁵ The proposed rule contemplates that certain types of telephones (*i.e.*, cellular phones) may be used for personal purposes.⁶ The proposed rule would limit the use of telephones on the options floor for business purposes, depending on the category of user (specialist, registered options trader ("ROT"), floor broker, or clerk).

The proposed rule change would require members and member organizations to register by category of user any new telephone to be used on the options floor prior to use. Registration and maintenance of registration records would be handled through the Exchange's Membership Services Department. If there is a change in the category of user, the telephone must be re-registered with the Exchange. At the time of registration, the user must sign a statement that the user is aware of and understands the rules governing the use of telephones on the options floor. The Exchange believes that this should facilitate record keeping and also should enhance the ability of the Exchange's Market Surveillance Department to investigate potential violations of the rule.

The proposed rule also would provide that no person on the options floor may use any device, including, but not limited to, intercoms, walkie-talkies, and similar devices, for the purpose of maintaining an open line of communication whereby a person not located in a trading crowd may continuously monitor the activities of that crowd.

The proposed rule specifies the capacity and functionality permitted for use of telephones on the options floor. Specifically, proposed Phlx 606(e)(2) provides that no wireless telephone on the options floor may have an output of more than one watt.

The purpose of this provision is to minimize the possibility of radio frequency or other interference with the systems of the Exchange of those of other members.⁷

¹⁵ 17 CFR 200.30-3(a)(12).

¹⁶ 15 U.S.C. 78s(b)(1).

¹⁷ 17 CFR 240.19b-4.

³ The Exchange submitted a new Form 19b-4, which replaced and superseded the original filing ("Amendment No. 1"). Amendment No. 1 amended the purpose section of the proposed rule change to provide a description of provisions governing floor brokers, registered options traders, general access phones, and exchange liability. Amendment No. 1 also clarified that registration and maintenance of registration records is handled through the Exchange's Membership Services Department. Finally, Amendment No. 1 amended proposed Phlx Rule 606(e)(3) to include specialists.

⁴ Securities Exchange Act Release No. 43740 (December 19, 2000), 65 FR 82437.

⁵ The proposal will also be set forth in new Options Floor Procedure Advice ("OFPA") F-31.

⁶ All categories of users are permitted to make and receive personal phone calls, subject to existing prohibitions when necessary because of electronic interference. Telephone calls between Rick Rudolf, Counsel, Phlx, and Sonia Patton, Staff Attorney, Commission (December 18, 2000).

⁷ Currently, Exchange Rule 606(b)(2) prohibits members, member organizations and any person associated with a member organization from establishing or maintaining any telephonic, electronic or wireless transmitting system or device, and from operating any other equipment on the Options Floor, that creates radio frequency or other interference with the systems of the Exchange or other members.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ The Commission has approved similar interim linkage proposals submitted by the CBOE and the ISE. See *supra* note 8.