

public interest. The Commission believes that permitting the VWAP settlement calculation methodology for NASDAQ/NMS component securities of an index option may provide more opportunity for investors to transact at a price near the settlement price, and should result in a settlement value more reflective of the markets in NASDAQ/NMS securities.<sup>7</sup>

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In the notice,<sup>8</sup> the Commission indicated that it would consider granting accelerated approval of the proposal after a 15-day comment period. The Commission received no comments on the proposal during the 15-day comment period. The Commission believes it is reasonable to implement the proposal on an accelerated basis, in view of the anticipated benefits of the proposal. For these reasons, the Commission finds good cause for accelerating approval of the proposed rule change.

#### IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with Section 6(b)(5)<sup>9</sup> in particular.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-AMEX-2002-15) be and hereby is approved.

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. 34-45894; File No. SR-PCX-2002-23]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Market Maker Auto-Ex Log On Requirements

May 8, 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 April 25, 2002, the Pacific Exchange, Inc. ("Exchange" or "PCX") 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 the PCX. The proposed rule change has been filed by the PCX as a "non-controversial" rule change under rule 19b-4(f)(6) under the Act.<sup>3</sup> 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

PCX proposes to amend its rules in order to eliminate the current requirements for Market Makers, set forth in PCX Rule 6.87(e)(4), to log on to PCX's automatic execution system ("Auto-Ex").<sup>4</sup>

Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed deletions are in [brackets].

\* \* \* \* \*

#### Automatic Execution System

##### Rule 6.87

(a)-(d)—No change.

(e) Market Maker Requirements and Eligibility. Any Exchange Member who is registered as a Market Maker and who has obtained written authorization from a clearing member is eligible to participate on the Auto-Ex system, subject to the following conditions and requirements:

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> The PCX Auto-Ex system permits eligible market or marketable limit orders sent from member firms to be executed automatically at the displayed bid or offering price. Participating Market Makers are designated as the contra side to each Auto-Ex order on a rotating basis. Automatic executions through Auto-Ex are currently available for public customer orders at 250 contracts or less in all series of options traded on the PCX's options floor.

(1)-(3)—No change.

(4) *Reserved*. [Log on Requirement. A Market Maker who has been logged on to Auto-Ex in an option issue at any time during an expiration month must continue to be logged on to Auto-Ex in that issue whenever present in that trading crowd, until the close of business on the next Expiration Friday. A Market Maker who is limited to "closing only" transactions pursuant to PCX Rules or the requirements of that Market Maker's clearing firm will be exempt from this provision upon approval of two Floor Officials.]

(5)-(7)—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 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

On July 10, 2000, the Exchange effected a new PCX rule establishing Auto-Ex log-on requirements for Market Makers.<sup>5</sup> The current Auto-Ex rules outline the requirements with which a Market Maker (other than a Lead Market Maker ("LMM")) must comply in order to be eligible to participate on Auto-Ex. Among the requirements, a Market Maker who has been logged on to Auto-Ex in an option issue at any time during an expiration month must continue to be logged on to Auto-Ex in that issue whenever present in that trading crowd, until the close of business on the next expiration Friday. The PCX represents that, by implication, a Market Maker who logs off of Auto-Ex may not log back on until the beginning of the next expiration cycle. The Exchange voluntarily implemented the rule in order to encourage Market Makers to remain on Auto-Ex throughout the trading month.

After assessing the impact of the Auto-Ex log on requirement, the

<sup>5</sup> See Securities Exchange Act Release No. 43150 (August 14, 2000), 65 FR 51390 (August 23, 2000).

<sup>7</sup> This approval order limits use of the VWAP as a permissible index option settlement value calculation methodology for NASDAQ/NMS listed components. Should the Amex wish to use the VWAP as the methodology for securities other than NASDAQ/NMS component securities, the Commission expects the Exchange to file a proposed rule change for Commission consideration.

<sup>8</sup> See footnote 3, *supra*.

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

<sup>10</sup> 15 U.S.C. 78s(b)(2).

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

Exchange believes that, because the requirement provides so little flexibility, it no longer serves the purpose for which it was created, *i.e.*, encouraging greater Market Maker participation on Auto-Ex. Thus, despite the fact that LMMs would prefer Market Makers to participate on Auto-Ex as their risk profiles allow, the Exchange believes that the current requirement limits participation in an all-or-none fashion. As a consequence, the Exchange proposes to remove the log on requirement in its entirety in order to encourage Market Makers to log on to Auto-Ex to the extent that their business models permit.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>7</sup> in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as 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 inappropriate burden on competition that is not necessary 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*

No written comments were either solicited or received.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section

19(b)(3)(A)<sup>8</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The PCX seeks to have the proposed rule change become operative immediately in order to maintain competition and efficiency among its market makers.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately upon filing as of April 25, 2002, to allow the PCX to maintain competition among its market makers and to encourage market makers to participate on Auto-Ex. 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.

## 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 such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

SR-PCX-2002-23 and should be submitted by June 5, 2002.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45893; File No. SR-Phlx-2002-25]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Increasing the Maximum Guaranteed AUTO-X Size to 250 Contracts**

May 8, 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 April 19, 2002, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") 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 the Phlx. On April 25, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change has been filed by the Phlx as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.<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 Phlx Rule 1080(c) to increase to 250 contracts the maximum order size of option contracts that are eligible to be executed on the Exchange's automatic execution system ("AUTO-X"), which is part of the Exchange's Automated Options

<sup>10</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 Richard S. Rudolph, Director and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 24, 2002 ("Amendment No. 1"). In Amendment No. 1, the Phlx amended its proposed rule text to eliminate a redundant sentence regarding the 250 contract maximum AUTO-X guarantee size for options on the Nasdaq-100 Index Tracking Stock ("QQQ").

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

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).