

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 available publicly. All submissions should refer to File Number SR-NYSE-2006-08 and should be submitted on or before March 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53361; File No. SR-PCX-2006-13]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to its Fees and Charges

February 24, 2006.

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 14, 2006, 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 Exchange. The PCX filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 proposes to amend its Schedule of Fees and Charges for Exchange Services in order to eliminate

the royalty fee that the Exchange assesses on options contracts traded on the NASDAQ 100 Tracking Index ("QQQQ"). The text of the proposed rule change is available on the PCX's Web site (<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 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 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 eliminate the royalty fee that the Exchange assesses on options contracts that have as their underlying symbol QQQQ. The PCX presently charges Market Makers, broker dealers, and OTP Firms \$0.05 per contract side when trading QQQQ options. In an effort to reduce costs associated with trading on the PCX, the Exchange proposes to eliminate this fee. By offering reduced fees, the PCX hopes to attract additional order flow and encourage more trading by market participants in QQQQ options. The PCX plans to implement the fee change on February 27, 2006.

2. Statutory Basis

The PCX believes the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁶ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

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

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 applicable only to a member imposed by the Exchange, and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁷ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁸ 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. 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. Please include File No. SR-PCX-2006-13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-PCX-2006-13. 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

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

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 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 available publicly. All submissions should refer to File No. SR-PCX-2006-13 and should be submitted on or before March 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53356; File No. SR-Phlx-2004-37]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Relating to Its Audit Committee

February 23, 2006.

I. Introduction

On May 20, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with 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 to amend the audit committee provisions of the Phlx By-Laws.³ On October 20, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The

Exchange has proposed: (i) To allow the Exchange's Board of Governors ("Board") to increase the size of its audit committee ("Audit Committee") up to a number to be determined by its Board from time to time; (ii) to require the members of the Audit Committee to be "Independent Governors;" and (iii) to modify and enhance the responsibilities of the Audit Committee.

The proposed rule change, as amended, was published for comment in the **Federal Register** on November 28, 2005.⁵ The Commission received no comments on the proposal. The Exchange filed Amendment No. 2 to the proposed rule change on February 10, 2006, and submitted its notification of withdrawal of Amendment No. 2 on February 14, 2006. On February 15, 2006, the Exchange filed Amendment No. 3 to the proposed rule change.⁶ This order approves the proposed rule change as modified by Amendment No. 1. Simultaneously, the Commission provides notice of filing of, and grants accelerated approval to, Amendment No. 3.

II. Description

The Exchange proposes to amend the Phlx By-Laws, Article X, Section 10-9 to: (i) Permit, but not mandate, the Board to increase the size of the Audit Committee; (ii) require all Audit Committee members to be "Independent Governors" as defined under the proposal; and (iii) modify and enhance the responsibilities of the Audit Committee. Currently, the Audit Committee is required to consist of three members. The Exchange proposes to require that the Audit Committee be composed of at least three members, and to have the Board establish the exact size of the Audit Committee from time to time.

The Exchange also proposes to require all Audit Committee members to be "Independent Governors." The Exchange proposes to define "Independent Governor" as a member of the Board who has no material relationship with the Exchange or any affiliate of the Exchange, any member of the Exchange or any affiliate of such member, or any issuer of securities that

technical changes to the proposed rule text, and revised the filing's purpose section to reflect the addition of the definition of "independent director."

⁵ See Securities Exchange Act Release No. 52777 (November 16, 2005), 70 FR 71360.

⁶ In Amendment No. 3, the Exchange replaced the term "independent director" in the proposed rule text with "Independent Governor," deleted references to a maximum five person Audit Committee in the description of the proposal, and made clarifying corrections to the proposed rule text.

are listed or traded on the Exchange or a facility of the Exchange.⁷ The proposal would define the term "material relationship" as a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the Governor. The Exchange has represented that the Board would determine whether each Audit Committee member is an Independent Governor upon that Governor's nomination to the Audit Committee and thereafter no less frequently than annually and as often as necessary in light of the Governor's circumstances.

The Exchange also proposes to incorporate into the Phlx's By-Laws enhanced Audit Committee duties and responsibilities, including: (i) Sole responsibility for appointing, retaining, and replacing its external auditors; (ii) direct oversight over such auditors; (iii) reviewing at least annually the qualification and performance of such auditors; (iv) direct authority to resolve disagreements between management and such auditors regarding financial reporting; (v) responsibility to ensure the rotation of the lead and concurrent auditors every five years and certain other auditors every seven years, with time-out periods; (vi) evaluation of the independence of external auditors, including ensuring that, other than deferred tax and compliance services, external auditors do not engage in certain non-audit services when they conduct audits for the Exchange and approval of non-audit services where appropriate; (vii) establishing procedures for the receipt, retention, and treatment of complaints received by the Exchange regarding accounting, internal accounting controls, or other auditing matters and confidential anonymous submissions by Exchange employees regarding questionable accounting practices; and (viii) determining the appropriate amount of funding to be provided by the Exchange for the purpose of paying compensation to external auditors to prepare or issue an audit report, compensation to advisers to the Audit Committee necessary for it to carry out its duties, and ordinary administrative expenses of the Audit Committee.

The Exchange also proposes to remove the phrase "independent public accountants" from Article X, Section

⁷ The Exchange has cited to the Commission's proposed rulemaking on the fair administration and governance of self-regulatory organizations for its proposed definitions of "Independent Governor" and "material relationship." See Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) ("SRO Governance Proposal").

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Phlx By-Laws Article X, Sections 10-9(a)-(b).

⁴ In Amendment No. 1, the Exchange added a definition of "independent director" and made