

conditions applicable to the use of personal cellular telephones on the ATF are set forth in paragraph (e) to the proposed rule. Paragraph (f) provides that Exchange Officials may substitute for Senior Floor Officials without reference to their seniority in the event that a Floor Official's ruling is appealed to a three Senior Floor Official panel and there is an insufficient number of available Senior Floor Officials to consider the appeal.<sup>5</sup>

## 2. Statutory Basis

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)<sup>7</sup> in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities.

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

The proposed rule change will impose no burden on competition 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*

No written comments were solicited or received by the Exchange on this proposal.

## 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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

<sup>5</sup> The Exchange has a proposal pending with the Commission that would modify Amex Rule 22 to establish a three-level review process in which Floor Official decisions, as needed, may be appealed to a three Senior Floor Official Panel. See Securities Exchange Act Release No. 52325 (August 23, 2005), 70 FR 51392 (August 30, 2005) (SR-AMEX-2005-052).

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

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

## 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. 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-Amex-2004-76 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2004-76. 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 Amex. 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-Amex-2004-76 and should be submitted on or before September 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Docket No. 34-52345; File No. SR-PCX-2005-61]

### **Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change, and Amendment No. 1 Thereto Establishing a *De Minimis* Exception to the 80/20 Test**

August 26, 2005.

## I. Introduction

On April 26, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1954 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change seeking to modify the 80/20 Test in determining limitations on Principal Order<sup>3</sup> access under the rules imposed by the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan")<sup>4</sup> and related rules. On July 29, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was noticed for comment in the **Federal Register** on July 27, 2005.<sup>5</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

<sup>8</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> The Exchange defines a Principal Order as an order for a principal account of an eligible Market Maker that does not relate to a customer order the Market Maker is holding. See PCX Rule 6.92(a)(12)(ii).

<sup>4</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Inc., and the International Stock Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, the Philadelphia Stock Exchange, Inc., the PCX and the Boston Stock Exchanges, Inc. joined 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>5</sup> See Securities Exchange Act Release No. 52070 (July 20, 2005), 70 FR 43490 (July 27, 2005).

## II. Description

The purpose of this proposed rule change, as amended, is to implement proposed Joint Amendment No. 17 to the Linkage Plan. Joint Amendment No. 17, together with this proposed rule change, would modify the "80/20 Test" set forth in section 8(b)(iii) of the Linkage Plan and PCX Rule 6.96. PCX Rule 6.96 states that Market Makers should send Principal Orders through Linkage on a limited basis and not as a primary aspect of their business. The 80/20 Test implements this general principle by prohibiting a Market Maker from sending Principal Orders in an eligible option class if, in the last calendar quarter, the Market Maker's Principal Order contract volume is disproportionate to the Market Maker's contract volume executed against customer orders in its own market.

The Exchange believes that applying the 80/20 Test has resulted in anomalies for Market Makers with limited volume in an eligible option class. Specifically, if a Market Maker has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the Market Maker failing to meet the Test. This would bar the Market Maker from using the Linkage to send Principal Orders in that option class for the following calendar quarter. The Exchange contends that it was not its intention to bar Market Makers with limited volume from sending Principal Order through the Linkage in these circumstances since such trading was not "a primary aspect of their business." Thus, the proposed rule would create a *de minimis* exemption from the 80/20 Test for Market Makers that have total contract volume of less than 1,000 contracts in an option class for a calendar quarter.

## III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act<sup>7</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 to protect investors and the public interest. The Commission believes that the proposed rule change will increase the availability of Linkage to members of the Participants by limiting the applicability of the 80/20 Test in situations where market makers have minimal trading volume in a particular options class.

The Commission recognizes that the Exchange does not believe that it is necessary to bar market makers with limited volume from sending Principal Orders through the Linkage, as such trading does not raise concerns that a member is sending such orders as "a primary aspect of their business." The Commission believes that the *de minimis* exemption from the 80/20 Test proposed by the Exchange for market makers that have a total contract volume of less than 1,000 contracts in an options class for a calendar quarter should ensure that members with relatively low volume in a particular options class can send a reasonable number of Principal Orders without being barred from using the Linkage by application of the 80/20 Test in the following calendar quarter.

## IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-PCX-2005-61), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52344; File No. SR-Phlx-2005-33]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change, and Amendments No. 1 and 2 Thereto, Relating to Sending Principal Orders Via the Intermarket Options Linkage

August 26, 2005.

## I. Introduction

On May 6, 2005, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change seeking to amend Phlx Rule 1087, Limitation on Principal Order<sup>3</sup> Access, relating to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan")<sup>4</sup> and related rules. On May 11, 2005, the Phlx submitted Amendment No. 1 to the proposed rule change. On July 8, 2005, the Exchange submitted Amendment No. 2. The proposed rule change, as amended, was noticed for comment in the **Federal Register** on July 27, 2005.<sup>5</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

## II. Description

The purpose of this proposed rule change, as amended, is to implement proposed Joint Amendment No. 17 to the Linkage Plan. Joint Amendment No. 17, together with this proposed rule change, would establish a *de minimis* exception to the "80/20 Test" set forth

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

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

<sup>3</sup> A "Principal Order" is an order for the principal account of an eligible market maker that does not relate to a customer order the market maker is holding. See Section 2(16)(b) of the Linkage Plan.

<sup>4</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Inc., and the International Stock Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, the Phlx, the Pacific Exchange, Inc. and the Boston Stock Exchange, Inc. joined 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>5</sup> See Securities Exchange Act Release No. 52072 (July 20, 2005), 70 FR 43495 (July 27, 2005).

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, completion, and capital formation. 15 U.S.C. 78c(f).

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

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.3(a)(12).