

the practicability of brokers executing investors' orders in the best market.<sup>5</sup> The proposed rule change will assure the availability of information with respect to quotations because it requires specialists to enter best bids and offers (whether their own or those of customers) into the OptiMark System at all relevant times during regular trading hours. Similarly, because customer limit orders as well as the Specialist's own bids and offers must be entered into the OptiMark System, there will be an opportunity for price improvement for quotations in the OptiMark System.

In addition, the Commission believes the proposal is consistent with the Section 6(b)(5)<sup>6</sup> requirements that the rules of an exchange not be designed to discrimination against broker-dealers issuers and others using the Exchange because each PCX Specialist must be provided with appropriate access to the PCX Application at the Specialist's Post.<sup>7</sup>

In approving the proposal, the Commission is not suggesting that PCX Specialists' use of the OptiMark System satisfies those specialists' best execution obligations. By enhancing the investment choices available to investors over a broad range of trading scenarios, however, the proposal should help to ensure that investors that trade through PCX have an enhanced opportunity to obtain better prices for their securities transactions.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (PCX-98-36) is approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40548; File No. SR-PCX-98-50]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. to Make the LMM Book Pilot Program Permanent

October 14, 1998.

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 30, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by PCX. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to modify PCX Rule 6.82 to make the LMM Book Pilot Program permanent. Proposed new language is in *italics*; proposed deletions are in [brackets].

#### Text of the Proposed Rule Change Lead Market Makers

¶15181

Rule 6.82(a)-(h), No Change.

Commentary:

.01.—.02., No Change.

[.03. The provisions of Rule 6.82(h) are subject to a pilot program, which is set to expire on October 12, 1998.]

.03. [.04.], 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, 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 III below. 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

*Background.* The Commission approved the Lead Market Maker ("LMM") Book Pilot Program on October 11, 1996.<sup>3</sup> Under the program, a limited number of LMMs are able to assume operational responsibility for the options limit order book ("Book") in certain options issues.<sup>4</sup> The approved LMMs manage the Book function, take responsibility for trading disputes and errors, set rates for Book execution, and pay the Exchange a fee for systems and services. The program allows LMMs to have greater control over their operations by allowing them to set their own rates for execution services provided to customers.

In April 1997, the Commission approved an Exchange proposal to expand the scope of the pilot program to allow up to nine LMMs to participate and up to 150 symbols to be used.<sup>5</sup> In September 1997, the Commission approved PCX's request to extend the pilot program for one year.<sup>6</sup> In addition, the Commission approved inclusion of non-multiply-listed options issues in the program in February 1998; elimination of the cap on the number of symbols that may be used under the program in May 1998; and elimination of the cap of the number of LMMs that may participate in the program in August 1998.<sup>7</sup> The program currently has 10 LMM participants that are collectively trading 155 options issues (and 194 option symbols) as part of the pilot program.

*Proposal.* PCX is proposing to make the LMM Book Pilot Program permanent. The Exchange believes the program is operating successfully and without any problems, and on that basis, the Exchange believes that making the LMM Book Pilot Program permanent is warranted. The Exchange submitted a report on September 28, 1998, as requested by the Commission in Exchange Act Release No. 37810, which related to the one year extension of the pilot program approved in September

<sup>3</sup> See Exchange Act Release No. 37810 (October 11, 1996), 61 FR 54481 (October 18, 1996).

<sup>4</sup> *Id.*

<sup>5</sup> See Exchange Act Release No. 38462 (April 1, 1997), 62 FR 16886 (April 8, 1997).

<sup>6</sup> See Exchange Act Release No. 39106 (September 22, 1997), 62 FR 51172 (September 30, 1997).

<sup>7</sup> See Exchange Act Release Nos. 39667 (February 13, 1998), 63 FR 9895 (February 26, 1998); 40020 (May 21, 1998), 63 FR 29286 (May 28, 1998); and 40328 (August 17, 1998), 63 FR 45276 (August 25, 1998).

<sup>5</sup> 15 U.S.C. 78k-1(a)(1)(C) (iii) and (iv).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> In approving these rules, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>9</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

1997.<sup>8</sup> The report indicated that the Exchange had received no formal complaints on the operation of the pilot since the previous report. Moreover, the Exchange found no significant impact from the pilot on bid/ask spreads, depth, and continuity in the Exchange's options markets.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>9</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, because it is designed to perfect the mechanism of a free and open market, to promote just and equitable principles of trade, to facilitate transactions in securities, and in 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 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. 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. 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of PCX. All submissions should refer to File No.

SR-PCX-98-50 and should be submitted by November 12, 1998.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that PCX's proposal to make the LMM Book Pilot Program permanent is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5)<sup>11</sup> of the Act.

Section 6(b)(5) requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to protect investors and the public interest and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission believes that the proposal is consistent with these provisions of the Act because it is designed to give LMMs greater control over their operations on the Exchange floor while maintaining sufficient safeguards to permit proper Exchange oversight of the LMMs managing the Book function.<sup>12</sup>

The Commission notes that the LLM Book Pilot Program has been in operation two years without significant problems and may have resulted in cost savings to customers in Book execution charges while improving the Exchange's competitiveness.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication. The Commission notes when the LMM Book Pilot Program was initially proposed, notice was published in the **Federal Register** for the full 21-day comment period without any comments being received by the Commission.<sup>13</sup> Moreover, amendments to the LMM Book Pilot Program did not generate public comment.<sup>14</sup> Finally, the Commission believes it is important to ensure that the proposal runs without interruption. As a result, it is approved permanently.

*It is therefore ordered*, pursuant to Section 19(b)(2)<sup>15</sup> of the Act that the proposed rule change (SR-PCX-98-50) is hereby approved on an accelerated basis.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See n. 3 above (order approving pilot and noting that, among other safeguards, the Exchange's Options Allocation Committee will evaluate LMMs at least semiannually.)

<sup>13</sup> See, n. 3 above.

<sup>14</sup> *Id.*

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

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40557; File No. SR-Phlx-97-55]

### **Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Establishing an Enhanced Parity Split Pilot Program for Specialists in Foreign Currency Options Effective Until October 1, 1999**

October 15, 1998.

## I. Introduction

On December 1, 1997, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") submitted to 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 to establish an enhanced parity split pilot program for Exchange specialists trading foreign currency options. The proposed rule change was published for comment in the **Federal Register** on January 23, 1998.<sup>3</sup> The Commission did not receive any comment letters with respect to the proposal. The Exchange submitted Amendment No. 1 to the proposal on June 17, 1998,<sup>4</sup> and Amendment No. 2 on October 2, 1998.<sup>5</sup> This order

<sup>16</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> Securities Exchange Act Release No. 39552 (Jan. 15, 1998), 63 FR 3611 (Jan. 23, 1998).

<sup>4</sup> Amendment No. 1 modifies the application of the enhanced parity split in situations where a customer order for 100 or more FCO contracts is on parity. The revision requires that for customer bids/offers of 100 FCO contracts or more, no such customer order on parity shall receive a smaller participation than any other crowd participant, including the specialist. Amendment No. 1 also revises the text of the proposed rule to clarify that customer orders for less than 100 FCO contracts have time priority. See Letter to Michael Loftus, Attorney, Division of Market Regulation, Commission, from Nandita Yagnik, Counsel, Exchange, dated June 16, 1998.

<sup>5</sup> Amendment No. 2 extends the expiration date of the pilot program to October 1, 1999. See Letter to Michael Loftus, Attorney, Division of Market Regulation, Commission, from Nandita Yagnik, Counsel, Exchange, dated September 30, 1998.

<sup>8</sup> See n. 3 above.

<sup>9</sup> 15 U.S.C. 78f.

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