

for other self-regulatory organizations,¹⁴ and raises no new issues.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-2003-19 and should be submitted by December 29, 2003.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the portions of the proposed rule change (File No. SR-CHX-2003-19) set forth above relating to compliance with Rule 10A-3 under the Act, maintenance standards, and audit committee responsibilities and authority, be, and hereby are, approved, and that Amendment No. 1 be granted accelerated approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48857; File No. SR-NYSE-2002-40]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc. ("NYSE") To Establish Two New Crossing Sessions in the Exchange's Off-Hours Trading Facility

December 1, 2003.

On August 29, 2002, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("SEC" or "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 introduce into its rules "Crossing Session III" for the execution of guaranteed price coupled orders by member organizations to fill the balance of customer orders at a price that was guaranteed to a customer prior to the close of the Exchange's 9:30 a.m. to 4 p.m. trading session. On August 14, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.³ On October 8, 2003, the NYSE filed Amendment No. 2 to the proposed rule change.⁴ Amendment No. 1 would adopt a new Rule 907 to add a "Crossing Session IV" whereby an unfilled balance of an order may be filled at a price such that the entire order is filled at no worse price than the Volume Weighted Average Price ("VWAP") for the subject security. Proposed Crossing Session III and Crossing Session IV would operate as a one-year pilot. The proposed rule change and Amendment Nos. 1 and 2 thereto were published for notice and comment in the **Federal Register** on October 28, 2003.⁵ The Commission received no comments on the proposed rule change.

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

exchange⁶ and, in particular, the requirements of Section 6(b)(5) of the Act⁷ and the rules and regulations thereunder requiring that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that the proposed new crossing sessions may improve the transparency of these types of transactions which are currently often effected in non-U.S. markets without reporting. In approving Crossing Session I and Crossing Session II, the Commission granted exemptive relief from Rule 10a-1 under the Act⁸ (short sale rule) for transactions effected therein; this exemptive relief is not being extended to transactions effected in Crossing Session III and Crossing Session IV.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSE-2002-40), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-30356 Filed 12-5-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48861; File No. SR-PCX-2003-35]

Self-Regulatory Organizations; Order Granting Partial Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the Pacific Exchange, Inc., To Amend Its Corporate Governance and Disclosure Policies

December 1, 2003.

I. Introduction

On July 14, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities

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

⁷ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 240.10a-1.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated August 13, 2003, and enclosure ("Amendment No. 1"). Amendment No. 1 proposes to add "Crossing Session IV."

⁴ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated October 7, 2003, and enclosure ("Amendment No. 2"). Amendment No. 2 deletes the reference to a volume-weighted average price ("VWAP") order from paragraph (c) of proposed Rule 907.

⁵ Securities Exchange Act Release No. 48659 (October 20, 2003), 68 FR 61532.

¹⁴ See NYSE/NASD Corporate Governance Release, *supra* n. 7.

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its Corporate Governance and Disclosure Policies. The proposed rule change, among other things, would require each issuer listed on the PCX to establish an independent audit committee and to comply with the standards for audit committees mandated by section 10A(m) of the Act³ and Rule 10A-3 thereunder.⁴ The proposed rule change also includes provisions relating to board independence and independent committees, codes of conduct, and other corporate governance issues. On October 14, 2003, the Exchange filed Amendment No. 1 to the proposal.⁵ On October 31, 2003, the proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register**.⁶ The Commission received no comments on the proposal. On November 18, 2003, the Exchange filed Amendment No. 2 to the proposal.⁷

Rule 10A-3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003.⁸ This Order approves the proposed rule change in part as further discussed below, so that the PCX can comply with this deadline. This Order also provides notice of Amendment No. 2 and approves Amendment No. 2 on an accelerated basis. The Commission notes that the PCX is considering revisions to the portions of the proposed rule change that pertain to corporate governance listing standards other than the revisions to comply with Rule 10A-3, particularly in light of rule changes by the New York Stock Exchange, Inc. and

the National Association of Securities Dealers, Inc. that were recently approved by the Commission.⁹ This Order does not relate to those other proposed provisions.

II. Description of Approved Changes

The Commission is approving in this Order the following provisions of the proposed rule change, which implement the requirements of Rule 10A-3:

(1) The third proposed additional sentence to PCX Rule 5.3, "Corporate Governance and Disclosure Policies," which, as approved states: "Issuers of any security that is listed pursuant to the Rules of the Corporation must comply with the provisions of Rule 5.3(k)(5).";

(2) Proposed PCX Rule 5.3(k)(5)(A) in its entirety, as well as the heading, "Audit Committee," for proposed PCX Rule 5.3(k)(5);

(3) The heading and second sentence of proposed PCX Rule 5.3(n), "Listed Foreign Private Issuers." The rule, as approved, states: "Listed foreign private issuers must comply with the provisions of Rule 5.3(k)(5).";

(4) The proposed change to existing PCX Rule 5.5(a), "Maintenance Requirements and Delisting Procedures," which would add language to conform the rule to Rule 10A-3; and

(5) All the proposed changes to existing PCX Rule 5.5(m), "Delisting Procedures," which consist of adding a cross-reference to Rule 5.3 and referring to violations of Rule 5.3(k)(5), in which case the corporation shall initiate delisting procedures.

In addition, the Commission is approving Amendment No. 2 to the proposed rule change on an accelerated basis. In Amendment No. 2, the PCX proposes to expand, with respect to investment companies, the scope of its proposed provision regarding complaint procedures. Rule 10A-3 requires audit committees to establish procedures for "the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters."¹⁰ The amended PCX proposal would require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such

concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

III. Discussion

After careful review, the Commission finds that the provisions of the proposed rule change specified above that implement the requirements of Rule 10A-3 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹

Specifically, the Commission finds that these changes are consistent with section 6(b)(5) of the Act,¹² which requires, among other things, that the PCX's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

Moreover, the Commission believes that the Exchange's proposal to add the new requirements concerning audit committees is appropriate and consonant with section 10A(m) of the Act and Rule 10A-3 thereunder relating to audit committee standards for listed issuers.

Furthermore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,¹³ to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. This expansion of complaint procedures of audit committees at investment companies proposed in Amendment No. 2 responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting their rules, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.¹⁴ The Commission believes that it is appropriate to accelerate approval of this amendment because it conforms to similar provisions approved by the Commission for other self-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78j-1(m).

⁴ 17 CFR 240.10A-3.

⁵ See letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 8, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange made changes to proposed rule text in PCX Rule 5.3(k)(5)(B)(ii)(a).

⁶ See Securities Exchange Act Release No. 48700 (October 24, 2003), 68 FR 62146 (October 31, 2003).

⁷ See letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 17, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange proposed an additional section of rule text, PCX Rule 5.3(k)(5)(A)(v), to expand, with respect to investment companies, the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

⁸ 17 CFR 240.10A-3.

⁹ See Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR-NYSE-2002-33 and SR-NASD-2002-141) ("NYSE/NASD Corporate Governance Release"). Telephone conference call between Steven Matlin, Senior Counsel, PCX and Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and other Commission staff, on November 17, 2003.

¹⁰ 17 CFR 240.10A-3(b)(3)(ii).

¹¹ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ See Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A-3).

regulatory organizations¹⁵ and raises no new issues.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-2003-35 and should be submitted by December 29, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁶ that the portions of the proposed rule change (File No. SR-PCX-2003-35) set forth above relating to compliance with Rule 10A-3 under the Act be, and hereby are, approved, and that Amendment No. 2 relating to complaint procedures of audit committees of investment companies be granted accelerated approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48851; File No. SR-Phlx-2003-77]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Renewal of a Pilot Program To Disengage the Automatic Execution Feature (AUTO-X) of the Exchange's Automated Options Market (AUTOM)

November 26, 2003.

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 November 19, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and granting accelerated approval to the proposal for a pilot period of one year.

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

The Phlx proposes to extend, for a one-year period, its Pilot program concerning AUTO-X, whereby AUTO-X is disengaged for a period of 30 seconds after the number of contracts automatically executed in a given class of options meets the specified disengagement size for the option (the "Pilot").³ The Exchange also proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X),⁴ to reflect a systems change

to the Pilot that was previously filed for immediate effectiveness with the Commission.⁵ The text of the proposed rule change is set forth below. Brackets indicate deletions; indicates new text.

Philadelphia Stock Exchange
Automated Options Market (AUTOM)
and Automatic Implementation System (AUTO-X)

Rule 1080. (a)-(b) No change.

(c) (i)-(iii) No change.

(iv) (A)-(H) No change.

(I) when the number of contracts automatically executed within a 15 second period in an option (subject to a Pilot program until November 30, 2003[3]4) exceeds the specified disengagement size, a 30 second period ensues during which subsequent orders are handled manually. *If the Exchange's disseminated size exceeds the specified disengagement size and an eligible order is delivered for a number of contracts that is greater than the specified disengagement size, such an order will be automatically executed up to the disseminated size, followed by an AUTO-X disengagement period of 30 seconds. If the specialist revises the quotation in such an option prior to the expiration of such 30-second period, eligible orders in such an option shall again be executed automatically.*

(v) No change.

(d)-(j) No change.

Commentary:

.01-.07 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 Phlx included statements concerning the purpose of, and the 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. The Phlx 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 the proposed rule change is to extend the Pilot for a one-year period, and to amend Exchange Rule 1080(c)(iv)(I) to reflect a systems change to the Pilot, as more fully

¹⁵ See NYSE/NASD Corporate Governance Release, *supra* n. 9.

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Pursuant to a telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Marc McKayle, Special Counsel, Division of Market Regulation ("Division"), Commission on November 25, 2003, the sentence was changed to clarify that the Pilot relates to option classes.

⁴ AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. See Exchange Rule 1080.

⁵ See Securities Exchange Act Release No. 48430 (September 3, 2003), 68 FR 53415 (September 10, 2003) (SR-Phlx-2003-52).