

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51392; File No. SR-PCX-2004-65]

Self-Regulatory Organizations; Notice of Filing and Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. Relating to the Deletion of Obsolete or Unnecessary Rules

March 17, 2005.

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 July 9, 2004, 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. On February 9, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ On March 10, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ 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 Exchange proposes to delete certain of its rules, or portions thereof,

which have been determined by the Exchange to be obsolete or unnecessary. The text of the proposed rule change, as amended, is set forth below.

Proposed deletions are in brackets.

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Rule 4

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Exemptions

Rule 4.7 An OTP Holder or OTP Firm shall be exempt from the filing requirements prescribed by Rules 4.5 and 4.6 under the following conditions:

(a) Any Floor Broker, Market Maker in listed options, or Lead Market Maker in listed options, registered with the Exchange in any such capacity, who is exempt from the minimum net capital requirements prescribed by Rule 4.1.

[An OTP Holder or OTP Firm qualifying for an exemption from the regular filing requirements pursuant to this Paragraph shall file with the Exchange for each calendar quarter a balance sheet and income statement in such form as prescribed by the Exchange. Such balance sheet and income statement shall be due by the fifteenth calendar day following the end of each calendar quarter in which the exemption provided in this Paragraph is applicable.]

(b) Any OTP Holder or OTP Firm that is a member of another self-regulatory organization, which has been designated the examining authority for such OTP Holder or OTP Firm by the Securities and Exchange Commission.

[An OTP Holder or OTP Firm qualifying for an exemption pursuant to this Paragraph shall file with the Exchange a copy of Notice and Part II of SEC Form X-17A-5, including such supplementary schedules as may be required, pursuant to the provisions of Rule 17a-11 under the Securities Exchange Act of 1934, as amended, at such time and at such frequency as prescribed by such other Designated Examining Authority or by any applicable rule.]

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Rule 11

Business Conduct

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Joint Accounts

Rule 11.12(a)—No change.

[(b) Reporting. No OTP Holder or OTP Firm, nor any participant therein shall directly or indirectly hold any interest or participation in any substantial joint account for buying or selling any security through the facilities of the Exchange, unless such joint account is

reported to and not disapproved by the Exchange. Such reports, in form prescribed by the Exchange, shall be filed with the Exchange before any transaction is completed through the facilities of the Exchange for such joint account.

The Exchange shall require weekly reports, in form prescribed by the Exchange, to be filed with it with respect to every substantial joint account for buying or selling any specific security on the Exchange and with respect to every joint account which actively trades in any security on the Exchange in which any OTP Holder, OTP Firm or participant therein holds any interest or participation or of which such OTP Holder, OTP Firm or participant therein has knowledge by reason of transactions executed by or through such OTP Holder, OTP Firm or participant therein; provided, however, that this paragraph shall not apply to joint accounts specifically permitted by this Rule.

In the event the requirements hereof should be applicable to a security also dealt in on another national securities exchange having requirements substantially equivalent hereto and an OTP Holder or OTP Firm is a member or member firm of such other exchange and complies with such requirements of such other exchange, then such OTP Holder or OTP Firm need not comply with the reporting provisions hereof.]

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Options Floor Procedure Advices

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Orders

* * * * *

[D-10

Subject: Imprinting the Name of OTP Holder or OTP Firm on Trade Tickets

Rule 6.66 requires an OTP Holder or OTP Firm to immediately give up the name of the clearing member through whom the transaction will be cleared and Rule 6.67 requires that orders be in a written form approved by the Exchange.

In order to reduce confusion and potential errors, the Exchange has ruled that OTP Holders or OTP Firms ordering trade tickets, other than Market Maker trade tickets, either from the Exchange or from other approved sources, shall cause to be imprinted or written thereon the name of the OTP Holder or OTP Firm that will be given up in transactions effected by the use of that ticket.]

¹³ 17 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original proposal.

⁴ In Amendment No. 2, PCX deleted the proposed changes to PCX Rule 6.68(a), which would have required an OTP Holder or OTP Firm to write its name or badge number on the trade ticket, since the necessary changes were made to PCX Rule 6.68(a) on January 7, 2005. See Securities Exchange Act Release No. 50998 (January 7, 2005), 70 FR 2443 (January 13, 2005) (approving File No. SR-PCX-2004-122). In SR-PCX-2004-122, PCX amended its rules relating to the systematization of orders in connection with the requirement to design and implement a consolidated options audit trail system, which included PCX Rule 6.68(a). PCX represents that the information in PCX Rule 6.68(a) is the same information required in PCX Options Floor Procedure Advice D-10. Amendment No. 2 also deleted language in the filing related to PCX Rule 6.68(a). In addition, Amendment No. 2 corrected a typographical error in the proposed rule text.

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 Exchange 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 December 9, 2003, the Exchange responded to a request from the Commission's Office of Compliance Inspections and Examinations for obligation compliance with respect to Section 19(g) of the Act.⁵ The Exchange performed a complete review of PCX rules, as well as the surveillance procedures thereto, and found a number of PCX rules that are obsolete or superfluous in the current market structure. Thus, the Exchange proposes to delete these inapplicable rules, or portions thereof, at this time. The proposed rules, or portions thereof, to be deleted are:

1. PCX Rule 4.7—This rule requires OTP Holders that are exempt from the net capital requirement filings (Options Market Makers without proprietary trading and inactive lessors) to file with the Exchange a balance sheet and income statement every calendar quarter. The Exchange represents that this rule is obsolete because the Exchange never implemented this reporting requirement as unnecessary. According to the Exchange, under Rule 17a-10 of the Act,⁶ exempt OTP Holders are only required to file an annual FOCUS Report, which includes a balance sheet and income statement on an annual basis.

2. PCX Rule 11.12(b)—This rule relates to PCX Joint Accounts reporting requirements. The Exchange proposes to delete this provision as unnecessary. According to the Exchange, PCX, by policy, does not allow the use of joint accounts by OTP Holders or OTP Firms for which the Exchange serves as the Designated Examining Authority, with one exception. Joint accounts are

allowed for Market Makers who trade on the floor. The use of these accounts is controlled by Shareholder and Registration Services ("SRS"). SRS assigns the acronyms for use of these accounts (e.g., J68). Since these accounts are assigned by SRS, and all trades are monitored daily and fed through PCX's existing surveillance systems, the Exchange does not require a separate weekly reporting requirement.

3. PCX Options Floor Procedure Advice D-10 (Imprinting the Name of OTP Holder or OTP Firm on Trade Tickets)—The Exchange no longer requires that the name of the OTP Holder or OTP Firm be imprinted on the trade tickets. The required ticket information is now set forth in PCX Rule 6.68.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and 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. 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 Exchange 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.

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 Number SR-PCX-2004-65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-65. 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 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-PCX-2004-65 and should be submitted on or before April 14, 2005.

⁵ 15 U.S.C. 78s(b).

⁶ 17 CFR 240.17a-10.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51394; File No. SR-Phlx-2004-83]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Matching of Certain Incoming Orders With Certain Phlx Existing Orders

March 18, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on November 26, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Phlx. On March 10, 2005, the Phlx filed Amendment No. 1 to the proposed rule change.³ 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 modify Phlx Rule 229 to permit the PACE⁴ System to match certain incoming orders with certain Phlx existing orders (the "Matching Rule").

The text of amended Phlx Rule 229 is set forth below. New text is *italicized* and [brackets] indicate deletions.

Rule 229. Philadelphia Stock Exchange Automated Communication and Execution System (PACE)

* * * * *
Supplementary Material: * * *
* * * * *

.01 No Change.

.02 Specialists are required to provide, at a minimum, PACE execution parameters, as defined by the Rule, to agency orders received through the system, except as provided below.

Although specialists are not required to provide PACE execution parameters, *except enhanced matching in Supplementary Material .04A*, to non-agency orders received through PACE, if the specialists choose to execute non-agency orders automatically through PACE, they must provide the same PACE executions to non-agency orders as they provide to agency orders. If however, the specialists choose to execute non-agency orders manually, they must adhere to existing Exchange rules governing orders not on the system with respect to such orders.

For purposes of the PACE System, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. Non-agency orders are not permitted on PACE except where the Exchange has been provided with a Specialist Agreement, signed by the respective specialist, acknowledging the acceptance of such non-agency orders from the specific firm(s), and any minimum execution parameters (order size guarantees) agreed to be provided to such orders by the respective specialist. Any such Specialist Agreement must provide the same minimum execution parameters to all non-agency orders by that specialist and will not provide for greater order size guarantees to non-agency orders than those provided to agency orders. Specialists' agreements to execute non-agency orders on PACE, and the termination of such agreements, shall be in accordance with the procedures set by the Exchange.

The specialist may choose to accept orders through PACE, without participating in the PACE execution guarantees for agency orders, where the entering member organization has generally elected not to receive automatic execution or primary market print protection for electronically delivered limit orders, in accordance with the procedures established by the Floor Procedure Committee.

.03-.04 No Change.

.04A (a) Definitions. For purposes of this Supplementary Material:

(i) Midpoint Price means the midpoint of the Modified PACE Quote as rounded, if applicable. Rounding will be applicable if the midpoint of the Modified PACE Quote is not a penny increment, in which case the Midpoint Price shall be rounded down (up) to the nearest penny if the existing Phlx order is an order to buy (sell). When the Modified PACE Quote is locked, the Midpoint Price is the locked price.

(ii) Modified PACE Quote means the PACE Quote, unless the PACE Quote is comprised of another market's quote of 100 shares or less ("100 Share Away Quote"), in which case the Modified PACE Quote will be 1 cent away from such 100 Share Away Quote.

(b) Enhanced Matching

(i) Round-lot market and limit orders (except as provided in (ii) below) and the round-lot portion of non-all-or-none PRL market and limit orders entered after the opening when the PACE Quote is not crossed will execute against existing round-lot market and limit orders and the round-lot portion of non-all-or-none PRL market and limit orders that have not been marked for lay-off and are executable at or within the Modified PACE Quote, if any, before being processed according to Supplementary Material .05, .07(b), (c)(i)-(ii) or .10(a)(i) of this rule or Rule 229A.

(ii) If the round-lot order entered after the opening is an all-or-none order, then such order will only receive the treatment described in the previous sentence if the size of the first potential existing order it would execute against is equal to or greater than such order.

(iii) No order for which the entering member organization has elected primary market high-low protection (as provided in .07(a)(ii)) will be matched in (i) above, if the execution price of such execution would be outside the primary market high-low range for the day.

(iv) Enhanced Matching Priority. Notwithstanding Supplementary Material .01 regarding priority, existing Phlx orders will be executed in price/time priority with the highest bid/lowest offer executed first, with existing market orders, for purposes of enhanced matching priority, being treated as limit orders priced at the Midpoint Price.

(c) Execution Price

(i) If the orders to be matched in (b) above are both market orders, then the execution price of these orders is the Midpoint Price.

(ii) If the orders to be matched in (b) above are both limit orders, then the execution price of these orders is the

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, which replaced the original proposal in its entirety, Phlx modified two concepts contained in the original proposed rule change (those of the Midpoint Price and the Modified PACE Quote), clarified the operation of the proposed rule change, reorganized the rule text of proposed new Supplementary Material .04A to Phlx Rule 229 into subsections, and made corresponding changes to other portions of the Supplementary Material to Phlx Rule 229 to reflect the applicability of the proposed rule change.

⁴ PACE is the Exchange's automated order routing, delivery, execution and reporting system for equities. See Phlx Rule 229.