

3 seeks to distinguish Structured Products from Funds and to further clarify the application of the different listing fees.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 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-2004-43 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-2004-43. 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, 450 Fifth Street, NW., Washington, DC 20549. 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-2004-43 and should be submitted on or before February 28, 2005.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act,¹² which requires that a national securities exchange's rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission notes that the proposed rule change would enact a revised fee schedule to provide separate fees for the listing of structured products. The Commission also notes that the proposed fees would apply indiscriminately to all issuers of structured products. The Commission believes that the revised fee schedule should provide clarity to issuers regarding the appropriate fees applicable to structured products. Therefore the Commission believes that the proposed rule change, as amended, is consistent with the Act.

The Commission finds good cause for accelerating approval of Amendment No. 3 prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change and Amendment Nos. 1 and 2 thereto were noticed for the full comment period and that no comments have been received on the proposal. The Commission further notes that Amendment No. 3 merely clarifies the proposal by adding definitions to its rules to codify the application of the various fees for the different derivative products. The Commission believes that accelerated approval should permit PCX to begin promptly to assess the new listing fees for structured products. For this reason, the Commission finds good cause exists, consistent with Section 19(b)(2) of the Act,¹³ to approve Amendment No. 3 on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-PCX-2004-43), as amended by Amendment Nos. 1

and 2, is hereby approved, and that Amendment No. 3 is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51118; File No. SR-PCX-2005-07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the OptiMark System

February 1, 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 January 20, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change 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 Exchange proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. The Exchange proposes to delete certain rules that have been determined by the Exchange as obsolete. The text of the proposed rule change is available at the Exchange's Web site (<http://www.pacificex.com>), at the Exchange's office of the secretary, and at the Commission's public reference room.

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

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ *Id.*

¹⁵ 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).

⁴ 17 CFR 240.19b-4(f)(6).

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 with respect to compliance with Section 19(g) of the Act.⁵ The Exchange performed a complete review of PCXE rules, as well as the surveillance procedures thereto, and found a number of PCXE rules that are obsolete or superfluous in the current market structure. Therefore, the Exchange proposes to delete these rules at this time.

The proposed rules to be deleted are: (1) PCXE Rule 7.6, Commentary .04; (2) PCXE Rule 7.39; and (3) PCXE Rules 7.45–7.54. These rules relate to the OptiMark System. The Exchange represents that ETP Holders have never had access to the OptiMark System and the OptiMark System has never been used on ArcaEx. Hence, according to the Exchange, all rules related to the OptiMark System are defunct.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁶ in general, and Section 6(b)(5) of the Act,⁷ in particular, in that it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms 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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ 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.

Although Rule 19b-4(f)(6) under the Act¹⁰ requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission waived this requirement at the Exchange's request. The Exchange has also requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest, since the proposed rule change deletes provisions from Exchange Rules that relate to a system that the Exchange never used. Thus, the Commission designates the proposal to be operative upon filing with the Commission.¹¹

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ See *id.*

¹¹ For purposes only of accelerating the operative date of this proposal, the Commission has

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-2005-07 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-2005-07. 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-2005-07 and should be submitted on or before February 28, 2005.

considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78s(g).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5-472 Filed 2-4-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51114; File No. SR-Phlx-2005-07]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Extension of a Pilot Limiting Trade-Through Liability at the End of the Options Trading Session

January 31, 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 January 27, 2005, 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 and II below, which Items have been prepared by the Exchange. On January 28, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission.⁶ 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 amend Exchange Rule 1085(a)(2)(ii)(B), Order Protection, to correspond to the extension of the current pilot ("pilot") under the Plan for the Purpose of Creating and Operating

an Intermarket Option Linkage ("Linkage Plan"),⁷ which limits Trade-Through⁸ liability at the end of the options trading session, until January 31, 2006. The extended pilot would increase the limit on liability at the end of the trading session from 25 contracts to 50 contracts per Satisfaction Order.⁹ The text of the proposed rule change is available on the Phlx Web site (<http://www.phlx.com>), at the Phlx'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 Phlx 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

The purpose of the proposed rule change is to extend the pilot contained in Exchange Rule 1085(a)(2)(ii)(B), which limits trade-through liability at the end of the options trading session. Currently under the pilot, an Exchange member's trade-through liability is limited to 25 contracts per Satisfaction Order received during the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class. The Commission temporarily approved the pilot on January 31, 2003,¹⁰ followed by approval on June 18,

2003.¹¹ The Commission then granted an extension of the pilot until June 30, 2004¹² and then until January 31, 2005.¹³

The Exchange proposes to extend the pilot for an additional year, until January 31, 2006. In addition, the Exchange proposes to increase the limit on trade-through liability from 25 contracts to 50 contracts per Satisfaction Order received during the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class. This increase in the limit on liability would be effective on February 1, 2005, after the current pilot expires.

As a condition to granting permanent approval of this limitation, the Commission required that the options exchanges participating in the Linkage Plan ("Participants") provide the Commission with a report ("Report") regarding data on the use of the exemption no later than 60 days before seeking permanent approval. The Participants have provided the Commission with certain information required in the Report, and continue to discuss with Commission staff what additional information the staff may need to evaluate possible permanent approval of the trade-through limitation. This extension of the pilot would allow the limitation to continue in effect, as amended, while the Commission staff and the Participants continue to discuss permanent approval.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁵ in particular, in that the proposed rule change is designed to perfect the mechanisms of a free and open market and a national market system, protect investors and the public interest, and promote just and equitable principles of trade by extending the pilot limiting trade-through liability during the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class until January 31, 2006, and by

⁷ See Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) (Amendment to Linkage Plan to Conform to the Requirements of Securities Exchange Act Rule 11Ac1-7); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (Approval of Phlx Joining the Linkage Plan); and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Order approving the Linkage Plan).

⁸ "Trade-Through" means a transaction in an options series at a price that is inferior to the NBBO. See Exchange Rule 1083(t).

⁹ A "Satisfaction Order," is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. See Exchange Rule 1083(k)(iii).

¹⁰ See Securities Exchange Act Release No. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) (Temporary effectiveness of pilot program on a 120-day basis).

¹¹ See Securities Exchange Act Release No. 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4).

¹² See Securities Exchange Act Release No. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving Joint Amendment No. 8).

¹³ See Securities Exchange Act Release No. 49863 (June 15, 2004), 69 FR 35081 (June 23, 2004) (Order approving Joint Amendment No. 12). This extension increased the maximum liability from 10 to 25 contracts.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4 dated January 28, 2005

("Amendment No. 1"). In Amendment No. 1, the Exchange made technical corrections to the rule text included in the original rule filing. Amendment No. 1 replaced the original filing in its entirety.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ The Phlx asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).