

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 PCX proposes to add PCX Rule 13.5 in order to establish a provision limiting liability for the Options Clearing Corporation ("OCC") with respect to Exchange members' use of the Linkage.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*.

\* \* \* \* \*

### **Rule 13 Liability of Governors and Exchange**

\* \* \* \* \*

#### **Rule 13.2(a), Liability of Exchange**

(a)—(No change.)

(b) Whenever custody of an unexecuted order is transmitted by a member to or through the Exchange's order routing systems, electronic book or automatic executions systems or to any other automated facility of the Exchange, *excluding the Options Intermarket Linkage system*, whereby the Exchange assumes responsibility for the transmission or execution of the order, provided that the Exchange has acknowledged receipt of such order, the Exchange's liability for the negligent acts or omissions of its employees or for the failure of its systems or facilities shall not exceed the limits provided in this paragraph, (b), and no assets of the Exchange shall be applied or shall be subject to such liability in excess of the following limits:

(i)—(iii)—(No change.)

(c)—(No change.)

\* \* \* \* \*

#### **13.5(a), Liability for Options Intermarket Linkage**

(a) *The Exchange operates the Options Intermarket Linkage ("Linkage") for its Members or persons associated therewith pursuant to Rules 6.92–6.96. It shall be the responsibility of each Member or person associated therewith to verify the accuracy of transactions sent and received through the Linkage. The Linkage, as used to send orders and other information to or from the Exchange, is a facility or service afforded by the Exchange for purposes of Rule 13.2.*

Assistant Director, Division, Commission, dated August 7, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange removed a disclaimer provision contained in the proposed rule text, PCX Rule 13.5(c).

(b) *The Options Clearing Corporation, its affiliates, officers, directors, shareholders, agents and employees (collectively "OCC"), shall not be liable to Members or persons associated therewith for any loss, damage, claim or expense arising out of the use, non-use, or inability to use the Linkage, including without limitation the content of orders, trades, or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, the delays in transmission of orders, trades, or otherwise.*

\* \* \* \* \*

### **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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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**

The Exchange proposes to amend its liability rules by creating PCX Rule 13.5 in order to establish a provision limiting liability for the OCC with respect to PCX members' use of the Linkage. Pursuant to the Linkage Project and Facilities Management Agreement ("Agreement"),<sup>5</sup> the participating Self-Regulatory Organizations ("SROs"), including the Exchange, are required to file a proposed rule change with the Commission to provide the OCC with limited liability with respect to the Members' use of the Linkage. Under the Agreement, the SROs are required to file a proposed rule change with the Commission within four months following the Linkage's effective date of January 31, 2003. Hence, the Exchange filed this proposed rule change to fulfill its obligation under the Agreement.

The Exchange also proposes to add clarifying language in proposed PCX Rule 13.5(a) stating that the Linkage, as used to send orders and other information to or from the Exchange, is

a facility or service afforded by the Exchange for purposes of PCX Rule 13.2. In addition to such clarifying language, the PCX proposes to carve out an exception for the Linkage system in existing PCX Rule 13.2(b), as the Exchange believes that this rule is not intended to apply to the Linkage system.

##### **2. Statutory Basis**

The PCX believes that its proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular, in that it should promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest.

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

The PCX does not believe that the proposed rule change, as amended, 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**

The PCX neither solicited nor received written comments concerning the proposed rule change.

### **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 PCX consents, the Commission will:

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

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth

<sup>5</sup> Linkage Project and Facilities Management Agreement (January 30, 2003).

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

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