

submitted Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on August 19, 2003.⁵ On September 16, 2003 the PCX submitted Amendment No. 3 to the proposed rule change.⁶

The Commission received no comments on the proposed rule change, as amended. This order approves the proposed rule change, as amended, and issues notice of, and grants accelerated approval to, Amendment No. 3.

II. Description of the Proposed Rule Change

Pursuant to the Linkage Project and Facilities Management Agreement ("Agreement"),⁷ the Linkage Participants, including the Exchange, are required to file a proposed rule change with the Commission to provide the Options Clearing Corporation ("OCC") with limited liability with respect to the members' use of the Options Intermarket Linkage ("Linkage"). The PCX represents that it filed this proposed rule change to fulfill its obligation under the Agreement. The PCX proposes to adopt PCX Rule 13.5(b) to limit the liability for the OCC with respect to PCX members' use of the Linkage.

The Exchange also proposes to adopt PCX Rule 13.5(a) to provide 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 13.2.⁸ The proposed rule change provides that the OCC would have no liability to PCX members, with respect to the use, non-use, or inability to use the Linkage.

Lastly, the PCX proposed to carve out an exception for the Linkage system in

existing PCX Rule 13.2(b). The Exchange represents that this rule, which addresses the Exchange's liability for the negligent acts of its employees or failure of its systems or facilities whenever custody of an unexecuted customer order is transmitted by a member through the Exchange's automated facilities, is not intended to apply to the Linkage system, and that, therefore, the carve-out is appropriate.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁹ and, in particular, the requirements of section 6(b) of the Act¹⁰ and the rules and regulations thereunder. The Commission finds that the rule change, as amended, is consistent with section 6(b)(5) of the Act,¹¹ which requires, among other things, that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 this proposed rule change, as amended, should foster cooperation and promote a relationship between the PCX and the OCC that is conducive to the effective operation of the Linkage. Further, the Commission believes that the PCX's proposals to characterize the Linkage as a facility or service of the Exchange and to except the Linkage system from PCX Rule 13.2(b) are reasonable.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act, for approving Amendment No. 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the PCX changed the phrase "members or persons associated therewith," which was contained in the portion of the proposed rule text pertaining to the OCC's liability to such persons, to "members or associated persons." The Commission believes that this change will ensure that customers of a member or others who do business with a

member, but are not under the control of, or employed by, the member, are not inadvertently affected by the proposed rule change.

IV. 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. 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 filing also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2003-20 and should be submitted by October 27, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change, as amended (File No. SR-PCX-2003-20) is approved, and Amendment No. 3 is approved on an accelerated basis.

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

Jill M. Peterson,

Assistant Secretary.

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("Division"), Commission, dated August 1, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a new Form 19b-4, which replaced the original filing in its entirety.

⁴ See letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Deborah L. Flynn, 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).

⁵ Securities Exchange Act Release No. 48322 (August 12, 2003), 68 FR 49831.

⁶ See letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 2, 2003 ("Amendment No. 3"). In Amendment No. 3, the Exchange proposed to change the term "persons associated" to "associated persons" in proposed PCX Rule 13.5(a) and (b).

⁷ Linkage Project and Facilities Management Agreement (January 30, 2003).

⁸ PCX Rule 13.2, among other things, describes the extent of the Exchange's liability to members for use of the facilities and services provided by the Exchange.

⁹ In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² *Id.*

¹³ 17 CFR 200.30-3(a)(12).