

to pledge their shares of series A preferred stock to its end-of-day lenders;⁸

(d) The right of DTC, acting as agent and attorney-in-fact for its participants, to sell their shares of series A preferred stock to other participants (which have a corresponding obligation to purchase such shares) and to apply the proceeds to the participant's obligations to DTC;⁹

(e) Various changes in defined terms to: (i) Describe the series A preferred stock and the required investment of participants in series A preferred stock, (ii) distinguish, when necessary, between the series A preferred stock and the required investment of participants in series A preferred stock (on the one hand) and the participants fund and the required deposit of participants to the participants fund (on the other hand) and (iii) refer collectively, when appropriate, to the series A preferred stock and the required investment of participants in series A preferred stock and the participants fund and the required deposit of participants to the participants fund;¹⁰

(f) The structure under which DTC, acting as agent and attorney-in-fact for a party that has ceased to be a participant, shall sell all of the shares of series A preferred stock of the former participant to current participants (who shall be required to purchase such shares pro rata to their required preferred stock investments at the time of such purchase) and shall add the proceeds thereof to the actual participants fund deposit of the former participant for disposition in accordance with Rule 4, Section 1(h) (which provides for the return of such actual participants fund deposit to a party ceasing to be a participant).¹¹

(g) Certain other conforming and minor stylistic changes.

(3) *Transition Procedure.* The transition procedure sets forth the time and manner in which, without any action required on the part of participants (other than the consent deemed to be given to DTC by virtue of their receipt of all necessary information and their continued use of the services and facilities of DTC), the required deposits of existing participants to the participants fund will be reduced in the aggregate amount of \$75 million and such participants will purchase from DTC a corresponding amount of the series A preferred stock.

The proposed rule change is consistent with the requirements of

Section 17A(b)(3)(A) of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change will not affect the safeguarding of securities and funds in DTC's custody or control for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition 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 from DTC participants have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 self-regulatory organization 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. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such

filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-00-02 and should be submitted by April 25, 2000.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-8196 Filed 4-3-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-42583; File No. SR-PCX-99-35)

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Pacific Exchange, Inc. To Increase Lead Market Maker Concentration Levels From 10% of 15% of the Issues Traded on the Exchange's Options Floor

March 28, 2000.

I. Introduction

On September 15, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² to amend PCX Rule 6.82(e)(3) to increase the percentage of issues that the PCX's Options Allocation Committee ("Committee") may allocate to a Lead Market Maker ("LMM") from 10% of the number of issues traded on the PCX's options floor to 15% of the number of issues traded on the PCX's options floor.

Notice of the proposed rule change was published for comment in the **Federal Register** on November 1, 1999.³ No comments were received regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Currently, PCX Rule 6.82(e)(3) states that in the absence of extraordinary circumstances, as determined by the Committee, no LMM may be allocated more than 10% of the number of issues traded on the PCX's options floor. The Exchange proposes to amend PCX Rule 6.82(e)(3) to increase the percentage of issues that the Committee may allocate

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 42051 (October 22, 1999), 64 FR 58876.

⁸ Rule 4, Section 2(f).

⁹ Rule 4, Section 2, and Rule (B).

¹⁰ Rule 1.

¹¹ Rule 4, Section 2(h).

to an LMM from 10% of the number of issues traded on the PCX's options floor to 15% of the number of issues traded on the PCX's options floor.

The Exchange proposes to amend PCX Rule 6.82(e)(3) for several reasons. First, the Exchange anticipates that the Continued Listing Fee, which the PCX implemented in September 1999, will reduce the total number of issues traded on the PCX's options floor.⁴ The Exchange believes that the Continued Listing Fee will result in the delisting of a significant number of options issues, thus lowering the total number of issues that an LMM may hold.⁵

Second, the Exchange believes that it is necessary for competitive reasons to permit the allocation of additional issues to LLMs. The Exchange believes that the proposal will place the PCX's LLMs on a more equal footing with specialists on the American Stock Exchange ("Amex") and Designated Primary Market Makers ("DPMs") on the Chicago Board Options Exchange ("CBOE") with respect to the number of issues that may be allocated to them.⁶ The Exchange believes that the current 10% cap is unnecessarily low and that an increase in concentration levels is consistent with rules and guidelines of other options exchanges.

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act, in that the proposal is designed to promote just and equitable principals of trade, 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.⁷ Specifically, the Commission believes that the proposal will allow the PCX to revise PCX Rule 6.82(e)(3) to provide a limit on options allocations

⁴ See Securities Exchange Act Release No. 42050 (October 21, 1999), 64 FR 58117 (notice of filing and immediate effectiveness of File No. SR-PCX-99-32.) The Continued Listing Fee applies to options market makers and LMM's who wish to continue trading options issues that fail to produce revenue of more than \$500 per month through transaction, comparison, and data entry fees. If no LMM or trading crowd is willing to pay the Continued Listing Fee for an option that is subject to the fee, the PCX will delist the option.

⁵ Since the implementation of the Continued Listing Fee, 158 issues have been delisted. Telephone conversation between Robert Pacileo, Staff Attorney, Regulatory Policy, PCX, and Yvonne Fraticelli, Special Counsel, Division of Market Regulation ("Division"), Commission, on March 23, 2000.

⁶ See e.g., CBOE Regulatory Circular RG99-135, discussed in Section III, *infra*.

⁷ 15 U.S.C. 78f(b)(5).

that is comparable to the policies of other options exchanges, thereby helping the PCX to compete more effectively with other options exchanges.⁸

For example, the Commission notes that under the CBOE's policy, the CBOE's Modified Trading System Appointments Committee will review a DPM's concentration level if an event or proposal would cause a DPM to meet any two of the following three criteria: (1) The number of classes allocated to a DPM (and any affiliated DPMs) is 25% or more of the total number of classes traded on the CBOE (excluding DJX, NDX, OEX, and SPX); (2) the volume in the classes allocated to a DPM (and any affiliated DPMs) is 25% or more of the total volume of the CBOE (excluding DJX, NDX, OEX, and SPX); or (3) the number of DPM appointments held by a DPM (and any affiliated DPMs) is 25% or more of the total number of DPMs effective on the CBOE.⁹ Similarly, the Amex has no rule limiting the number of options products that may be allocated to a specialist unit, although the Amex considers several factors, including capitalization and the number of persons in a specialist unit, in making allocation decisions. In addition, the Amex will review a proposal merger of specialist units if the proposed merger would result in the concentration in the unit of 25% or more of the trading volume on the Amex or 25% or more of the number of products traded on the Amex.¹⁰

By increasing the number of issues that may be allocated to an LLM from 10% of the issues traded on the PCX's options floor to 15% of the issues traded on the PCX's options floor, the proposal will help to make PCX Rule 6.82(e)(3) more comparable to the policies of the CBOE and the Amex. Although the proposal increases the percentage of issues that may be allocated to an LLM, the Commission does not believe that the proposal will result in an undue concentration of issues in an LLM. In this regard, the Commission believes that the proposal to limit the number of issues that may be allocated to an LLM to 15% of the number of issues traded on the PCX should address concerns regarding potential adverse effects on the maintenance of a fair and orderly market that could arise from an LLM's insolvency or similar event. In addition,

⁸ In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ See CBOE Regulatory Circular RG99-135.

¹⁰ Conversation between Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, and Yvonne Fraticelli, Special Counsel, Division, Commission, on March 20, 2000.

the Commission notes that the PCX's proposal rule is more restrictive than the allocation policies of the CBOE and Amex, which do not impose a specified mandatory limit on the number of options that may be allocated to specialists or DPMs.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act (specifically, Section 6(b)(5) of the Act) and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-PCX-99-35) is approved.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-8195 Filed 4-3-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42590; File No. SR-PCX-99-36]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Options Trading Rules

March 29, 2000.

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 October 1, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On March 28, 2000, the Exchange 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.

¹ 15 U.S.C. 78s(b)(2).

² 17 CFR 200.30-3(a)(12).

³ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange withdrew the proposed changes to PCX Rule 6.6 because the changes were previously made and approved in Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999). See letter from Michael D. Pierson, Director—Regulatory Policy, PCX, to Heather Traeger, attorney, Division of Market Regulation, SEC, on March 27, 2000 ("Amendment No. 1").