

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42821; File No. SR-CBOE-00-18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Interpret Rules Relating to Customer Communications

May 24, 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 April 20, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" 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. 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 CBOE proposes to issue a Regulatory Circular to its membership setting forth a clarifying interpretation to Exchange Rule 9.21, *Communications to Customers*, which governs communications from member firms to customers or members of the public. The text of the proposed rule change is available at the CBOE and at the Commission.

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 CBOE 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 CBOE 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

Exchange Rule 9.21, *Communications to Customers*, governs communications between Exchange members and their customers and other members of the public. The Exchange, along with the other options exchanges, has published *Guidelines for Options Communications* ("Guidelines")³ to explain the customer communications rules of the options exchanges and the interpretations of these rules. The Exchange proposes to issue a Regulatory Circular to formally install a clarifying interpretation that has long been applied by the Exchange. This interpretation deals with the requirement to discuss tax considerations when engaging in certain option strategies. Although the Exchange believes this interpretation to be consistent with and fairly implied by Rule 9.21 and the Guidelines, the Exchange believes that clarification in a Regulatory Circular would be beneficial to its members.

Although Rule 9.21 is silent regarding tax considerations in customer communications, the Guidelines and the Exchange's internal checklist ("Checklist"), which CBOE's Department of Financial and Sales Practice Compliance uses in reviewing communication materials, do require that tax considerations be discussed in communications in certain circumstances. The Guidelines state, "depending upon the technical or specific nature of such communication, any one or more of the following points should be addressed." The Guidelines go on to list various considerations, including the following statement about taxes, "[s]ince options transactions may involve complex tax considerations, it would be misleading to omit the mention of such strategies from any communication that discusses or recommends options strategies." In response to comments and recommendations made by the Commission's Office of Compliance Inspections and Examinations, the Exchange in February 1994 added language to its Checklist reflecting the Exchange's long-standing practice in reviewing communications for tax

considerations. That practice was, and is, to require a discussion of tax considerations if the communication is educational material or sales literature that is strategy specific and complex.

The Exchange believes that more clarification could be provided to its members regarding this topic and has, therefore, decided to issue an interpretation in a Regulatory Circular clarifying which communications require a mention about tax considerations. The language in the interpretation mimics the language contained in the Exchange's Checklist. The proposed interpretation states that an advisory concerning taxes is required for educational material and sales literature involving specific, detailed and complex option strategies. In addition, the proposed interpretation states an advisory regarding taxes is not necessary where the communication is of a general, noncomplex nature or involves common basic options strategies (e.g., purchasing, covered writing or cash secured put writing). An example of an appropriate advisory concerning taxes, where one is needed, would be, "[b]ecause of the importance of tax considerations to all option transactions, the investor considering options should consult with his/her tax advisor as to how taxes affect the outcome of contemplated options transactions."

Again, although the proposed interpretation merely restates the Exchange's long-standing policy in reviewing customer communications for the inclusion of discussions of tax considerations, the Exchange believes that this policy also makes sense from a practical standpoint. The Exchange believes that in common, basic option strategies the tax consequences are straightforward. Therefore, the Exchange believes that the inclusion of a tax advisory in all communications might serve to lessen the impact of the advisory in those cases where the advisory serves a useful purpose.

The Exchange believes that formal clarification of this interpretation of Rule 9.21 is warranted; however, the Exchange also believes that its long-standing interpretation is appropriate and supported by the language of the Guidelines.

2. Statutory Basis

The CBOE believes the proposed Regulatory Circular interpretation of Exchange Rule 9.21 is consistent with and further the objectives of Section 6(b)(5)⁴ of the Act in that it is designed to remove impediments to a free and

³ See Securities Exchange Act Release No. 29682 (September 13, 1991), 56 FR 47973 (September 23, 1991) (File Nos. SR-Amex-90-38; SR-CBOE-90-27; SR-NASD-91-02; SR-NYSE-90-51; and SR-PSE-90-41).

⁴ 15 U.S.C. 78f(b)(5).

¹⁴ 17 CFR 200.30-3(a)(29).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

open market and to protect investors and the public interest.

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

The CBOE does not believe that the proposed Regulatory Circular interpretation of Exchange Rule 9.21 will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed Regulatory Circular interpretation of Exchange Rule 9.21.

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 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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-00-18 and should be submitted by June 22, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42822; File No. SR-PCX-00-10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the PCX Application's Mid-Point Price Profile

May 24, 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 March 26, 2000, the Pacific Exchange, Inc. ("Exchange" or "PCX"), filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 is filing a proposed rule change to modify the definition of the term "Orders" under Exchange Rule 15.1(f) of its Rules of the Board of Governors, as such term is used for purposes of the PCX Application of the OptiMark System ("PCX Application"), and to add Commentary .04 to Rule 5.3, Rules of the Board of Governors, Equities Trading, Trading Differentials, to provide for separate minimum trading differentials for certain profiles in the PCX Application. The proposed rule change would permit certain PCX Application Profiles to receive an execution under specified circumstances at price increments finer than the minimum trading differential permitted under the Exchange's rules for other transactions on the Exchange. The text of the proposed rule change is available at the Exchange and at the Commission.

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 September 17, 1997, the Commission approved the PCX Application.³ The PCX Application is a computerized, screen-based trading service for use by Exchange members and their customers to purchase or sell equity securities listed or traded on the Exchange ("PCX Securities"). The PCX Application is a supplement to the Exchange's traditional floor facilities and allows PCX members and their customers to submit expressions of trading interest known as "Profiles" anonymously from their computer terminal. As stated in the Approval Order, Profiles do not constitute "bids" or "offers" within the meaning of Exchange Act Rule 11Ac1-1, the "Firm Quote Rule." Rather, each Profile "is only a generalized expression of interest with conditions attached and is not eligible for execution until the completion of the Cycle."⁴

The PCX Application includes several types of Profiles where price can be pegged to reflect changes in a specific market parameter. The midpoint price ("MP") Profile is a type of pegged Profile. An MP Profile allows a user to enter a Profile to be priced at the midpoint of the national best bid or offer ("NBBO") posted on the consolidated Quotation System ("CQS") at the time of a matching cycle of the PCX Application. The MP feature will automatically update the price of any buy or sell Profile designated by the user of the PCX Application to conform to the midpoint of the NBBO displayed on CQS. All Profiles, other than the CQS

³ See Securities Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997) (SR-PCX-97-18) ("Approval Order"). The PCX Application has been in operation on the Exchange since January 1999.

⁴ *Id.* at 50046.