

### 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. Commission Discussion

The Commission notes that, by separate letter, the NASD has agreed to provide an alternative quotation and transaction reporting facility for NASD members that effect transactions in the over-the-counter market but that choose not to participate in the SuperMontage.<sup>34</sup> Specifically, the NASD has committed to provide a quotation reporting facility that meets the Association's statutory obligations under the Act, and to operate a transaction reporting facility pursuant to an effective transaction reporting plan filed in accordance with the Exchange Act Rule 11Aa3-1.<sup>35</sup> The facility would be designed to allow NASD members to meet their obligations under the SEC's Order Handling Rules and Regulation ATS as well as any transaction reporting obligations imposed by the NASD rules. This facility would provide an electronic linkage to the Nasdaq marketplace and would be operational contemporaneously with SuperMontage.

### V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 8, including whether Amendment No. 8 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to Amendment No. 8 to File No. NASD-99-53 and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>36</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43526 File No. SR-PCX-00-35]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to Equity Housekeeping Amendments

November 7, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 24, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange"), on behalf of its wholly-owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On November 2, 2000, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule

<sup>36</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 1, 2000 ("Amendment No. 1"). In Amendment No. 1, the PCX made a correction to Rule 6.3 by adding the word "must" which had inadvertently been left out. The PCX also clarified that the removal of the phrase "or other appropriately designated forms" from Rule 6.3 was not approved by Securities Exchange Act Release No. 41083 (February 22, 1999), 64 FR 10052 (March 1, 1999) (SR-PCX-98-52). The phrase is being removed because Equity Trading Permit ("ETP") Holders, Equity ASAP Holders, and ETF Firms are only required to submit SEC Form X-17A-5.

change and Amendment No. 1 to 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 make various housekeeping and technical changes to certain previously approved PCX rules by making minor conforming changes to the existing language in order to incorporate those changes into the PCXE rules. The text of the proposed rule change is available at the Office of the Secretary, PCX, 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 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

The Exchange is proposing to make the following changes below to incorporate previously approved changes to the rules of the PCX into the PCXE rules.<sup>4</sup> Specifically, the Exchange is proposing to apply the PCX rule language to ETP Holders, Equity ASAP Holders, and ETP Firms by incorporating such rule language into the PCXE rules.<sup>5</sup>

a. *PCXE Rule 2—Equity Trading Permits. Mandatory Decimal Price Testing*—The Exchange proposes to add PCXE Rule 2.25, based upon PCX Rule 1.15(b).<sup>6</sup> Minor conforming changes

<sup>4</sup> The rules of the PCX that governed the equities trading business of the Exchange were amended and renumbered when the PCXE was created. See Securities Exchange Act Release No. 42759 (May 5, 2000), 65 FR 30654 (May 12, 2000). Thus, the PCX rules that govern the equities business are now referred to as PCXE rules.

<sup>5</sup> Language was changed mainly to refer to "ETP Holders, Equity ASAP Holders, and ETP Firms" (in the PCXE rules) instead of "members or member organizations" (in the PCX rules), and to refer to the "Corporation" (in the PCXE rules) instead of "Exchange" (in the PCX rules).

<sup>6</sup> See Securities Exchange Act Release No. 42998 (June 30, 2000), 65 FR 42412 (July 10, 2000).

<sup>34</sup> Letter from Frank G. Zarb, Chairman and Chief Executive Officer, NASD to Arthur Levitt, Chairman, Commission, dated October 30, 2000.

<sup>35</sup> 17 CFR 11Aa3-1.

have been made to existing language of the PCX Rule in order to incorporate it into the PCXE rules.

b. *PCXE Rule 7—Equities Trading—Off-Board Trading Restrictions. Cabinet Dealings*—The Exchange proposes to amend PCXE Rule 7.20(a), formerly PCX Rule 5.5(b), to eliminate the sentence “Securities placed in the CABINET System, until removed, may be traded off the Corporation without compliance with Rule 7.49(b).” The SEC previously approved the removal of this sentence from PCX Rule 5.5(b).<sup>7</sup> The Exchange proposes to eliminate the sentence in order to reflect this change in PCXE Rule 7.20(a). *Over the Counter Execution of Equity Securities Transactions*—The Exchange proposes to eliminate PCXE Rule 7.49(a)–(e), formerly PCX Rules 5.43, 5.44, 5.46, 5.48, and 5.49.<sup>8</sup>

c. *PCXE Rule 7—Equity Trading—Trading Differentials. Trading Differentials*—The Exchange proposes to amend PCXE Rule 7.10(a), formerly PCX Rule 5.3(b), by adding Commentary .04.<sup>9</sup> The Exchange also proposes to add the words “Nasdaq-100 Shares” to Commentary .03.<sup>10</sup>

*PCX Equities, Inc. Application of the OptiMark System*—The Exchange proposes to amend PCXE Rule 7.71(a), formerly PCX Rule 15.1, by adding the phrase “provided, however, that Orders may be generated from central processing of the profiles designated for the midpoint pricing service by the OptiMark System in conformance with the trading differential in Rule 7.10(a), Commentary .04.”<sup>11</sup>

d. *PCXE Rule 9—Conducting Business with the Public. Advertisements, Market Letters and Sales Literature Relating to Options*—The Exchange proposes to amend the language in paragraphs (E)–(G) of Commentary .03 to PCXE Rule 9.28(e), adapted from PCX Rule 9.28.<sup>12</sup>

3. *PCXE Rule 5—Listings. Financial Reports and Related Notices (EDGAR Rule Filing)*—The Exchange proposes to amend PCXE Rule 5.3(i)(1)(i), formerly PCX Rule 3.3(t)(1)(i), by adding Commentary .04.<sup>13</sup>

f. *PCXE Rule 7—Equity Trading—Intermarket Trading System Plan. Definitions*—The Exchange proposes to amend PCXE Rule 7.66, formerly PCX

Rule 5.20, by adding a provision that seeks to define the term “PCX Coordinating Specialist,” and by adding Commentary .04.<sup>14</sup>

g. *PCXE Rule 8—Trading of Certain Equity Derivatives. Nasdaq-100 Index*—The Exchange proposes to add PCXE Rule 8.100(g) and Commentary .03, formerly PCX Rule 8.300(g) and Commentary .03, relating to the trading of Nasdaq-100 Index shares.<sup>15</sup>

h. *Equity Floor Procedure Advice 2—C. Reporting of Transactions*—The Exchange proposes to amend Equity Floor Procedure Advice 2–C by removing one of the exceptions provided for reporting of transactions from PCXE Rule 7.37(a).<sup>16</sup>

i. *PCXE Rule 6—Business Conduct. Prevention of the Misuse of Material, Nonpublic Information*—The Exchange proposes to amend PCXE Rule 6.3, adapted from PCX Rule 2.6(e), to add the phrase “for whom the Corporation is the Designated Examining Authority (“DEA”),” to add Commentary .02, and to eliminate Commentary .04.<sup>17</sup> The Exchange also proposes to remove certain unnecessary language.<sup>18</sup>

j. *PCXE Rule 5—Listing. General Provisions and Definitions*—The Exchange proposes to add PCXE Rule 5.1(b)(15), formerly PCX Rule 3.1(b)(15).<sup>19</sup>

*Investment Company Units*—The Exchange is proposing to add PCXE Rule 5.2(j)(3), formerly PCX Rule 3.2(k). The Exchange is also proposing to add PCXE Rules 5.5(g)(1) and (2), formerly Rules 3.5(g) and (h). Finally, the Exchange proposes to add Commentaries .02 and .03 to PCXE Rule 7.28(a)(1), formerly PCX Rule 5.33(a).<sup>20</sup>

k. *PCXE Rule 6—Business Conduct. Communications to and on the Trading Facilities*—The Exchange proposes to add PCXE Rule 6.17, adapted from PCX Rule 4.23.<sup>21</sup>

l. *PCXE Rule 4—Capital Requirements and Financial Reports, Margins.*

*Exceptions to Margins*—The Exchange proposes to amend PCXE Rule 4.15(c)(5), adapted from PCX Rule 2.15–2.16, by replacing the phrase “margin required by the other provisions of this Rule” with the phrase “haircut

requirements of SEC Rule 15c3–1.” Also the Exchange proposes to add Rule 4.15(c)(6).<sup>22</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b)<sup>23</sup> of the Act, in general, and section 6(b)(5),<sup>24</sup> in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, 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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)<sup>25</sup> of the Act and subparagraph (f)(3) of Rule 19b–4<sup>26</sup> thereunder because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such 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.

## 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

<sup>22</sup> See Securities Exchange Act Release No. 42453 (February 24, 2000), 65 FR 11620 (March 3, 2000).

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>26</sup> 17 CFR 240.19b–4(f)(3).

<sup>7</sup> See Securities Exchange Act Release No. 42890 (June 1, 2000), 65 FR 36877 (June 12, 2000).

<sup>8</sup> *Id.*

<sup>9</sup> See Securities Exchange Act Release No. 42822 (May 24, 2000), 65 FR 35150 (June 1, 2000).

<sup>10</sup> See Securities Exchange Act Release No. 41712 (August 5, 1999), 64 FR 44072 (August 12, 1999).

<sup>11</sup> See *supra* note 6.

<sup>12</sup> See Securities Exchange Act Release No. 42577 (March 27, 2000), 65 FR 17329 (March 31, 2000).

<sup>13</sup> See Securities Exchange Act Release No. 42431 (February 16, 2000), 65 FR 9026 (February 23, 2000).

<sup>14</sup> See Securities Exchange Act Release No. 42708 (April 20, 2000), 65 FR 25780 (May 3, 2000).

<sup>15</sup> See *supra* note 7.

<sup>16</sup> See Securities Exchange Act Release No. 41083 (February 22, 1999), 64 FR 10052 (March 1, 1999).

<sup>17</sup> See Securities Exchange Act Release No. 40863 (December 30, 1998), 64 FR 1057 (January 7, 1999).

<sup>18</sup> See Amendment No. 1, *supra* note 3.

<sup>19</sup> See Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999).

<sup>20</sup> See *id.*

<sup>21</sup> See Securities Exchange Act Release No. 40852 (December 28, 1998), 64 FR 1058 (January 7, 1999).

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 will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-00-35 and should be submitted by December 6, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>27</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43518; File No. SR-PCX-00-32]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Pacific Exchange, Inc. To Increase the Maximum Size of Orders Eligible for Automatic Execution

November 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 22, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to increase the maximum size of equity and index option contracts that may be designated for automatic execution to seventy-five contracts.

#### 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 received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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's Automatic Execution System ("Auto-Ex") automatically executes public customer market and marketable limit orders within certain size parameters. PCX Rule 6.87(b) currently provides that the Options Floor Trading Committee ("OFTC") shall determine the size of orders that are eligible to be executed through Auto-Ex. The rule further provides that although the OFTC may change the order size parameter on an issue-by-issue basis, the maximum order size for execution through Auto-Ex is fifty contracts for both equity and index options.<sup>3</sup> The Exchange is now proposing to increase the maximum size of option orders that are eligible for automatic execution, subject to designation by the OFTC on an issue-by-issue basis, to seventy-five contracts.<sup>4</sup>

The Exchange believes that these changes will help it to meet the changing needs of customers in the marketplace and give the Exchange better means of competing with other

<sup>3</sup> See Securities Exchange Act Release No. 41823 (September 1, 1999), 64 FR 49265 (September 10, 1999) (approving PCX proposal to increase the maximum size of index and equity option orders that may be automatically executed, from twenty to fifty contracts).

<sup>4</sup> The Exchange notes that, pursuant to PCX Rule 6.86(g), if the OFTC determines, pursuant to PCX Rule 6.87(b), that the size of orders in an issue that are eligible to be executed on Auto-Ex will be greater than twenty contracts, then the trading crowd will be required to provide a market depth for manual (non-electronic) orders in that greater amount, as provided in PCX Rule 6.86(a).

options exchanges for order flow, particularly in multiply traded issues. The Exchange also believes that increasing to seventy-five the number of option contracts executable through Auto-Ex will enable the Exchange to more effectively and efficiently manage increased order flow in actively traded option issues consistent with its obligations under the Act. In addition, the Exchange indicates that this increase should bring the speed and efficiency of automated execution to a greater number of retail orders. The PCX further believes that it should have flexibility to complete for order flow with other exchanges without being limited to responding to increases in automatic execution eligibility levels initiated by those other exchanges.<sup>5</sup>

The Exchange represents that it believes that the increase will not expose Auto-Ex to risk of failure or operational capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from implementation of this proposal.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)<sup>6</sup> of the Act, in general, and furthers the objectives of section 6(b)(5),<sup>7</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

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

PCX 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

No written comments were solicited or received with respect to the proposed rule change.

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

The PCX requests that the proposed rule change be given accelerated

<sup>5</sup> See PCX Rule 6.87(c) (permitting the PCX to match the maximum size of orders eligible for automatic execution that are permitted on another options exchange in multiply traded issues).

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

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

<sup>27</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.