

potential disputes as to a stock's primary market.

Rule 601 specifies the procedure for margining short positions in equity options. Open short positions are margined based on prices or quotes for the option itself. Assigned short positions, however, are margined based on the difference between the strike price of the option and the "marking price" of the underlying stock.⁵ Unlike the definition of "closing price" in Rule 805(j), the definition of "marking price" in Rule 601(b)(6) still refers to the closing price of an underlying stock on its "primary market."

Discussion

1. *Conforming Rule 601(b)(6) to Rule 805(j).* OCC believes that the definition of "marking price" in Rule 601(b)(6) and the definition of "closing price" in Rule 805(j) should not be materially different. According to OCC, the two prices are normally determined in the same manner and therefore should be defined in the same way. Therefore, OCC proposes that the Rule 601 definition of "marking price" conform to Rule 805 because the same concerns that led OCC to replace the term "primary market" in Rule 805 apply equally in the context of Rule 601.

2. *Regular Trading Hours.* OCC believes that with the growth of after-hours trading, questions might arise concerning the time that the "last reported sale price" of an underlying stock should be determined for purposes of fixing both the Rule 805 closing price and the rule 601 marking price. OCC therefore proposes that Rule 805(j) and 601(b)(6) be amended to refer to the last reported sale price "during regular trading hours (as determined by the Corporation [OCC]) * * *." This amendment would allow OCC to avoid potential disputes by (i) eliminating any basis for arguing that the closing price or the marking price should be determined based on after-hours trading and (ii) giving OCC discretion to determine when "regular trading hours" end.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act⁶ because it promotes the prompt and accurate clearance and settlement of equity and index options.

⁵ Assigned short positions are margined at OCC from the assignment date through the exercise settlement date (E+3).

⁶ 15 U.S.C. 78q-1.

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

OCC does not believe that the proposed rule change would impose any burden on competition.

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

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

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 OCC 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 will also be available for inspection and copying at the principal office of OCC. All submissions should refer to file number SR-OCC-00-04 and should be submitted by January 30, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43779; File No. SR-PCX-99-44]

Self-Regulatory Organizations; Pacific Exchange Inc.; Order Approving Proposed Rule Change Relating to PCX Rule 6, Options Trading, Trading Practices and Procedures

December 28, 2000.

I. Introduction

On October 29, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend some of its options trading rules. On January 7, 2000, the PCX submitted Amendment No. 1 to the proposed rule change.³ On May 25, 2000, the PCX submitted Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended by Amendment Nos. 1 and 2, was published in the **Federal Register** on August 23, 2000.⁵ On December 22, 2000, the Exchange submitted Amendment No. 3 to the proposed rule change.⁶ The Commission did not receive any comments on the proposed rule change. This order approves the proposal, as amended.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), SEC, dated January 6, 2000 ("Amendment No. 1").

⁴ See letter from Robert P. Pacileo, Senior Attorney, Regulatory Policy, PCX, to Jack Drogin, Assistant Director, Division, SEC, dated May 24, 2000 ("Amendment No. 2").

⁵ Securities Exchange Act Release No. 43149 (August 11, 2000), 65 FR 51392.

⁶ See letter from Peter D. Bloom, Director, Regulatory Projects, Regulatory Policy, PCX, to Kelly Riley, Division, SEC, dated December 20, 2000 ("Amendment No. 3"). In Amendment No. 3, the Exchange made non-substantive reference changes to proposed PCX Rules 6.51, 6.64 and 6.65 to reflect other amendments made to the rules. Because the changes in Amendment No. 3 were non-substantive, notice is not required.

II. Description of the Proposal

The Exchange proposed to modify its rules to trading practices and procedures on its options floor by clarifying existing provisions, eliminating superfluous provisions, incorporating current policies and procedures, and merging certain Options Floor Procedure Advices ("OFPA's") into the text of PCX Rule 6.

a. OFPAs

The Exchange proposed to delete the following OFPAs: OFPA A-1, Subject: Responsibility of Floor Brokers at the Opening; OFPA A-3, Subject: Procedure for Entering Orders in the Book Under Certain Circumstances; OFPA A-7, Subject: Floor Broker Giving Up a Name Other Than His Own as Executive Member; OFPA C-1, Subject: Procedures for Opening Rotations; OFPA D-7, Subject: Expressing Fractions in Writing; OFPA D-8b, Subject: Priority on Split Price Transactions; OFPA D-11, Subject: Record Retention Requirements; OFPA F-1, Subject: Admission to the Trading Floor, OFPA F-5, Subject: Means of Communication on the Options Floor; OFPA G-1, Subject: Options Transactions Based on Erroneous Prints of Underlying Security; OFPA G-2, Subject: Imbalance of Orders at Openings; OFPA G-5, Subject: Trading Procedures for Combination, Spread, or Straddle Orders Under Priority Rules; OFPA G-10, Subject: Public Outcry/OBO Awareness; and OFPA G-12, Subject: Reporting of Trade Information.

b. Proposed PCX Rule 6.64, Trading Rotations

The PCX proposed to make several changes to PCX Rule 6.64 relating to trading rotations. First, the Exchange proposed to allow two Floor Officials, rather than the Options Floor Trading Committee ("OFTC"), as currently required, to direct that a trading rotation be employed. Second, the Exchange proposed to modify and renumber PCX Rule 6.64, Commentary .01 (a) as proposed PCX Rule 6.64(b), OFPA C-1, Subject: Procedures for Opening Rotations, as proposed PCX Rule 6.64(b)(1) through (7), and OFPA G-2, Subject: Imbalance of Orders at Openings, as proposed PCX Rule 6.64(b)(8).

Third, the Exchange proposed to renumber PCX Rule 6.64, Commentary .01(b) as proposed PCX Rule 6.64(d). In addition, under proposed Rule 6.64(d), the Exchange proposed to specify that the book staff should notify floor brokers by 12:50 p.m. Pacific time that a closing rotation may be necessary. The

Exchange also clarified that closing rotations should commence at least ten minutes after the trading floor has been notified. Finally, under proposed Rule 6.64(d), the Exchange proposed to codify an express requirement that only orders that have been entered before 1:02 p.m. Pacific time are eligible for execution during a closing rotation.

Fourth, the Exchange proposed to renumber PCX Rule 6.64, Commentary .01(c) as proposed PCX Rule 6.64(d) and to renumber PCX Rule 6.64, Commentary .02 as proposed PCX Rule 6.64(e). Fifth, the Exchange proposed to renumber OFPA A-1, Subject: Responsibility of Floor Brokers at the Opening, as proposed PCX Rule 6.64(f). Finally, the Exchange proposed to renumber Commentaries .03 and .04 as Commentaries .01 and .02 respectively.

c. Proposed PCX Rule 6.65, Trading Halts and Suspensions

Currently, PCX Rule 6.65, Commentary .02 requires an Options Floor Official that authorizes a trading halt and the order book official ("OBO") assigned to the halted option to file a report with the Exchange Options Floor Committee and the Department of Member Firms. The Exchange proposed to have the report filed with Exchange Operations.

d. Proposed PCX Rule 6.66, Order Identification

The Exchange proposed to renumber OFPA A-7, Subject: Floor Broker Giving Up a Name Other Than His Own as Executing Member, as proposed PCX Rule 6.66(d).

e. Proposed PCX Rule 6.67, Orders Required to be in Written Form

First, the Exchange proposed to renumber PCX Rule 6.67, Commentary .02 as proposed PCX Rule 6.67(a). Second, the Exchange proposed to renumber OFPA F-5, Subject: Means of Communication on the Options Floor, as proposed PCX Rule 6.67(d). Third, the Exchange proposes to renumber PCX Rule 6.67, Commentary .01 as proposed PCX Rule 6.67(e). Finally, the Exchange proposed to eliminate OFPA D-7, which reiterated the requirement of PCX Rule 6.67 that all orders must be in a written form that is approved by the Exchange.

f. Proposed PCX Rule 6.68, Record of Orders

The Exchange proposed to renumber OFPA D-11, Subject: Record Retention Requirements, as proposed PCX Rule 6.68(b). In addition, the Exchange proposed to delete language in proposed PCX Rule 6.68(b) that reminded members that, pursuant to PCX Rule

6.68, every member organization is required to maintain and preserve for the period of time required in 17a-4 under the Act.⁷ a written record of every order.

g. Proposed PCX Rule 6.69, Reporting Duties

The Exchange proposed to renumber OFPA G-12, Subject, Reporting of Trade Information, as proposed PCX Rule 6.69, Commentary .02. In addition, the Exchange proposed that market maker clearing firms be directed to instruct their respective trading desks to identify market maker orders that are entered from off the floor and not entitled to market maker margin treatment by placing a "C" after the market maker's number in the "firm" box on the ticket. The Exchange proposed that floor brokers that accept market maker orders by phone to identify such orders in the same manner. Finally, in proposed PCX Rule 6.69, the Exchange proposed to add Commentary .04, which clarifies that time stamping on the back of the hard card does not meet the Exchange's time stamp requirements.

h. Proposed PCX Rule 6.70, Price Binding Despite Erroneous Report

The Exchange proposed to renumber OFPA G-1, Subject: Options Transactions Based on Erroneous Prints of Underlying Security, as proposed PCX Rule 6.70, Commentary .01. In addition, the Exchange added language to provide that members should use reasonable care when effecting transactions based on bids and offers that differ from previous bids and offers because of the probability that a print or market may be erroneous.

i. Proposed PCX Rule 6.73, Manner of Bidding and Offering

The Exchange proposed to renumber OFPA G-10, Subject: Public Outcry/OBO Awareness, as proposed PCX Rule 6.73, Commentary .01. In addition, the Exchange proposed to eliminate the requirement that the OBO be fully aware of all quotes and transactions at his or her assigned post.

j. Proposed PCX Rule 6.75, Priority of Bids and Offers

The Exchange proposed to renumber PCX Rule 6.75, Commentary .03, as proposed PCX Rule 6.75(c)(3). The Exchange also proposed to renumber OFPA A-3, Subject: Procedure for Entering Orders in the Book Under Certain Circumstances, as proposed PCX Rule 6.75, Commentary .03 and OFPA G-5, Subject: Trading Procedures for

⁷ 17 CFR 240.17a-4.

Combination, Spread, or Straddle Orders Under Priority Rules, as proposed PCX Rule 6.75, Commentary .04.

k. Proposed PCX Rule 6.76, Priority of Split Price Transactions

In PCX Rule 6.76(a), the Exchange proposed to change reference to "he" and "his" to "the member." The Exchange also proposed to change language in proposed PCX Rule 6.76 to read as follows: "[i]f a member purchases one or more option contracts of a particular series at a particular price or prices, the member must, at the next lower price at which another member bids, have priority in purchasing up to the equivalent number of option contracts of the same series that the member purchased at the higher price or prices, provided that the member's bid is made promptly and continuously and that the purchases effected represents the opposite side of a transaction with the same order or offer as the earlier purchase or purchases."

In addition, the Exchange proposed to eliminate OFPA D-8b, which simply reiterated the requirements of PCX Rule 6.76 pertaining to priority on split price transactions.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,⁹ which requires, among other things, that the rules of an exchange be 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.

a. OFPAs

The Commission believes that the proposed rule change should foster efficiency in the implementation and enforcement of the Exchange's rules. Currently, members must refer to both the Exchange's rules and the Exchange's OFPAs to ensure that they are complying with all of the applicable requirements of the Exchange's rules. By combining the OFPAs with the

applicable Exchange rules, the Commission believes that it should be easier for Exchange members to locate pertinent rule language and to comply with applicable Exchange rules.

b. Trading Rotations

The Commission finds that the proposed changes to the procedures relating to trading rotations are consistent with the Act because they should foster just and equitable principles of trade by expediting the trading rotation process. Specifically, the Exchange proposed to permit two floor officials to direct that a trading rotation be employed instead of the full OFTC, which should result in faster implementation of trading rotations. Faster implementation of trading rotations should permit the reopening of affected options contracts and, thus, a resumption of normal trading, in a more timely fashion.

The Exchange also proposed to implement a new notification procedure in the event a closing rotation is necessary. Specifically, the Exchange proposed that the book staff notify floor brokers by 12:50 p.m. Pacific time, that a closing rotation may be necessary, and to require that only orders entered by 1:02 p.m. Pacific time will be eligible for execution during the trading rotation. The Commission believes that these new closing rotation procedures should foster efficiency on the floor of the Exchange. The proposal should provide floor brokers with sufficient notice that a closing rotation may be employed and should provide them with ample time to ensure that their orders are entered by 1:02 p.m. Pacific time so that they may be executed during the closing rotation. The Commission believes that providing express procedures for orders entered at or near the close of trading should result in more efficient executions.

c. Reporting Duties

The Exchange proposed to require market making clearing firms to instruct their respective trading desks to identify market maker orders that are entered from off the Exchange floor and not entitled to market maker margin treatment with a "C" identifier. Floor brokers will also be required to use this identifier when accepting orders by phone from market makers. The Commission believes that the use of this new identifier should ensure that Exchange members properly handle market maker orders.

d. Erroneous Bids and Offers

The Exchange proposed to amend PCX Rule 6.70, Commentary .01 to direct that reasonable care should also

be exercised prior to effecting transactions based on bids or offers that differ from previous bids or offers such that the difference may give rise to the probability that a print or market may be erroneous. The Commission believes that this should foster just and equitable principles of trade by potentially reducing the number of transactions executed based on erroneous market information.

e. OBO Awareness of Quotes and Transactions

The Exchange proposed to eliminate the requirement that OBOs be aware of all quotes and transactions that occur at his or her assigned post. While the Commission appreciates that it may be impracticable for the OBO to keep track of all bids and offers and transactions occurring at a particular post, the Commission believes that the OBO must be aware of a significant amount of quotes and transactions such that he or she can maintain a fair, orderly and competitive market at the post. Thus, the Commission believes that it is appropriate to eliminate the current requirement because it is impracticable but expects that each OBO will continue to be sufficiently aware of the market at his or her post to be able to fulfill his or her responsibilities and obligations. Further, the Commission expects that the Exchange will monitor its floor to ensure that each OBO continues to fulfill his or her responsibilities and that the elimination of this requirement does not negatively impact the efficiency and integrity of each market at each post.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-PCX-99-44), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-538 Filed 1-8-01; 8:45 am]

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments Concerning Compliance with Telecommunications Trade Agreements

AGENCY: Office of the United States
Trade Representative.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

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

⁹ 15 U.S.C. 78f(b)(5).