

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43823; File No. SF-PCX-99-48]

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

January 9, 2001.

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 November 5, 1999, 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 Exchange. Amendment No. 1 was filed on October 11, 2000.³ 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 PCX proposes to modify its rules on options trading by clarifying existing provisions, eliminating superfluous provisions, codifying current policies and procedures, and renumbering certain Option Floor Procedure Advices ("OPFAs"). The text of the proposed rule change is available at the Office of the Secretary, the PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In this 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 several changes to the text of the PCX rules on options trading. First, the Exchange proposes to amend its rule 6.86⁴ by providing a cross-reference to rule 6.37(f).⁵ The Exchange proposes that, when rule 6.86 does not apply because an order is for a broker/dealer; a fast market has been declared; or rule 6.86 has been suspended, then rule 6.37(f) will apply. The Exchange proposes this rule change to protect investors and to emphasize the obligations of Market Makers on the Options Floor.

In addition, the Exchange proposes to define and clarify the terms "executed" and "filled" in rule 6.86, Commentary .09. Specifically, the Exchange proposes that an order is considered "executed" and "filled" at the price that was agreed upon when the trade was consummated, *i.e.*, when "buy" or "sell" was vocalized in response to a request for a market and disclosure was made of the price and the quantity of the order.

Second, the Exchange is proposing that rule 7.3(a)(6) references to subparagraphs (d) and (e) be changed to correctly reference subparagraphs (4) and (5).

Third, the Exchange proposes to renumber OFPA B-13, Subject: Evaluation of Options Trading Crowd

⁴ PCX rule 6.86 is the Exchange's "firm quote" rule for non-broker dealer customer orders.

⁵ PCX rule 6.37(f), to be amended as follows in a pending PCX filing with the Commission states that: "The following rule applies if rule 6.86 does not apply because an order is for a broker-dealer, a fast market has been declared or rule 6.86 has otherwise been suspended. Whenever a Floor Broker enters a trading crowd and calls for a market in any class and series at that post, each Market Maker present at the post where the option is traded is obligated, at a minimum, to make a market for one contract on each Market Maker's quoted price or 'implied' price (*e.g.*, if a Market Maker provides a bid but not an offer, the Market Maker's offering price will be implied by the bid price plus the maximum bid/ask spread differential specified in rule 6.37(b)(1)). In the event a Floor Broker is unable to satisfy an order from bids and offers given in the crowd, the Order Book Official may assign one contract to every Market Maker present within the trading crowd to assist the Floor Broker in satisfying the order. If a Market Maker at the post either bids lower or offers higher than the established market, such, Market Maker will be obligated to trade one contract at the price quoted by the Market Maker. If a Market Maker at the post fails to provide a bid or offer after having a reasonable opportunity to do so, the Market Maker will be obligated to trade one contract at the best price quoted in the crowd, or if there are no prices quoted, at the disseminated price." See Securities Exchange Act Release No. 42035 (October 19, 1999), 64 FR 57681 (October 26, 1999) (File No. SR-PCX-99-13).

Performance as rule 6.100. The Exchange proposes to renumber OFPA B-13 to centralize specific obligations, responsibilities and procedures of the Options Allocation Committee with respect to the evaluation of Lead Market Makers ("LMM") and trading crowds. Specifically, the Exchange proposes to require that all procedures applicable to the Options Allocation Committee ("OAC") for review of LMM or trading crowd performance pursuant to OFPA B-13 be renumbered and incorporated, verbatim, as rule 6.100.

Fourth, the Exchange proposes to eliminate the statement in rule 10.13(g) which states that "[e]xcept as provided in rule 10.14 (Summary Sanction Procedures), the circumstances underlying the issuance of each floor citation shall be reviewed by a designated committee for a determination of whether the evidence is sufficient to find a violation of Exchange rules." The Exchange notes that this provision is inconsistent with rule 10.13(c), which provides, in part, that Exchange Regulatory Staff designated by the Exchange has the authority to impose a fine pursuant to rule 10.13.

Fifth, the Exchange proposes to adopt new rules 10.13(h)(13) and 10.13(k)(i)(13) to incorporate new rule 4.23 into the Minor Rule Plan and Recommend Fine Schedule.⁶ Rule 4.23 states that a member or member organization must obtain Exchange approval in order to Exchange or maintain a telephonic or electronic communication between the Floor and another location, or between locations on the Floor. The proposed recommended fines, pursuant to proposed rule 10.13(k)(i)(13) of this rule are \$250, \$750 and \$1,500 for first, second and third time violations, respectively.

Sixth, the Exchange proposes to adopt rule 10.13(h)(35) and 10.13(k)(i)(35) to incorporate new rule 6.35(d) into the Minor Rule Plan and Recommended Fine Schedule.⁷ Rule 6.35(d) states that newly registered Market Makers have a grace period (60 days from the commencement of trading), during which time they may have, but are not required to have, a Primary Appointment Zone. At the completion of the grace period, the Market Maker must select a Primary Appointment Zone. Market Makers who fail to select a Primary Appointment Zone prior to the expiration of their grace periods will

⁶ See Securities Exchange Act Release No. 40852 (December 28, 1998), 64 FR 1058 (January 7, 1999) (File No. SR-PCX-98-16).

⁷ See *supra* note 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made several technical changes to the proposed rule text to correct the numbering and lettering of certain sections of the rule text. See Letter to Heather L. Traeger, Attorney, Division of Market Regulation, SEC, from Cindy Sink, Senior Attorney, Regulatory Policy, PCX, dated October 10, 2000 ("Amendment No. 1").

be subject to disciplinary action pursuant to rule 10.13. The proposed recommended fines, pursuant to proposed rule 10.13(k)(i)(35) of this rule are \$500, \$1000 and \$1,500 for first, second and third time violations, respectively.

Seventh, the Exchange proposes to amend the text specifying the recommended fines for violations of the position limit rules pursuant to rule 10.13(k)(i)(21) of the Minor Rule Plan Recommended Fine Schedule. The Exchange proposes that position and exercise limit violations be the greater of \$250.00 or \$1 per contract over 5% of the applicable limit. The Exchange proposes this change so that it is obvious that the imposition of a monetary fine is recommended regardless of whether the applicable number of contracts is less than 5% over the designated position or exercise limit.

Eighth, the Exchange proposes to amend the text specifying the recommended fines for violations of the exercise limit rules pursuant to rule 10.13(k)(i)(22) of the Minor Rule Plan Recommended Fine Schedule. The Exchange proposes that position and exercise limit violations be the greater of \$250.00 or \$1 per contract over 5% of the applicable limit. The Exchange proposes this change so that it is obvious that the imposition of a monetary fine is recommended regardless of whether the applicable number of contracts is less than 5% over the designated position or exercise limit.

Ninth, the Exchange proposes to delete all references to OFPAs in rule 10.13(h) and (k), pertaining to the PCX Minor Rule Plan and to replace those references with the current rules. The Exchange proposes this change because it intends to renumber and incorporate all OFPAs pertaining to Options trading into the text of Rule 6.⁸

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act⁹ 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. The proposal is also consistent with Section 6(b)(6),¹⁰ which requires that members and persons associated with members be appropriately disciplined for violations of Exchange Rules.

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

Written comments were not solicited or received with respect to the proposed rule change.

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 the 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, as amended, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-99-48 and should be submitted by February 6, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43816; File No. SR-PCX-00-42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Supervisory Procedures

January 8, 2001.

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 December 1, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On December 28, 2000, the Exchange filed Amendment No. 1 to the proposed rule change.³ On January 5, 2001, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended, has become effective on filing pursuant to section 19(b)(3)(A) of the Act⁵ and rule 19b-4(f)(6) thereunder.⁶ The Commission is publishing this notice to solicit

¹¹ 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 Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission (December 28, 2000) ("Amendment No. 1"). Amendment No. 1 corrected typographical errors that appeared in the proposed rule text.

⁴ See Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission (January 5, 2001) ("Amendment No. 2"). Amendment No. 2 further corrected typographical errors that appeared in the proposed rule text.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

⁸ See Securities Exchange Act Release No. 42035 (October 19, 1999), 64 FR 57681 (October 26, 1999) (File No. SR-PCX-99-13); Release No. 43293 (September 14, 2000) 65 FR 57416 (September 22, 2000) (File No. SR-PCX-99-36); Release No. 43025 (July 12, 2000), 65 FR 44559 (July 18, 2000) (File No. SR-PCX-99-40); Release No. 43149 (August 11, 2000), 65 FR 51392 (August 23, 2000) (File No. SR-PCX 99-44); and Release No. 42861 (May 30, 2000), 65 FR 36489 (June 8, 2000) (File No. SR-PCX-99-45).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(6).