

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 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-NYSE-00-60 and should be submitted by February 23, 2001.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43887; File Nos. SR-PCX-00-18 and SR-Amex-00-57]

Self-Regulatory Organizations; Pacific Exchange, Inc. and American Stock Exchange LLC; Order Approving Proposed Rule Changes Relating to Increasing to One Hundred Contracts the Maximum Size for Option Orders That May Be Executed Automatically

January 25, 2001.

I. Introduction

On June 30, 2000, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal to increase the maximum size of equity and index option contracts that may be designated

for automatic execution to one hundred contracts. On November 15, 2000, the PCX rule proposal was published for public comment in the **Federal Register**.³ On November 28, 2000, the American Stock Exchange LLC ("Amex") also filed a similar proposed rule change to increase to one hundred the maximum permissible number of equity and index option contracts in an order executable through its automatic execution system. On December 13, 2000, the Amex rule proposal was published for comment in the **Federal Register**.⁴ The Commission received no comments on either the PCX or the Amex proposal. This order approves the PCX and the Amex proposed rule changes.

II. Description of the Proposed Rule Changes

A. PCX Proposal

The PCX'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 parameters on an issue-by-issue basis, the maximum order size for execution through Auto-Ex is seventy-five contracts for both equity and index options.⁵ The PCX 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 one hundred contracts.⁶

The PCX believes that these changes will help it meet the changing needs of customers in the marketplace and give the PCX better means of competing with other options exchanges for order flow, particularly in multiply traded issues. The PCX also believes that increasing to one hundred the number of option

contracts executable through Auto-Ex will enable the PCX to more effectively and efficiently manage increased order flow in actively traded options issues consistent with its obligations under the Act. In addition, the PCX indicates that this increase should bring the speed and deficiency of automated execution to a greater number of retail orders. The PCX further believes that it should have flexibility to compete for order flow with other exchanges without being limited to responding to increases in automatic execution eligibility levels initiated by those other exchanges.⁷

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

B. Amex Proposal

The Amex's Automatic Execution System ("AUTO-EX") automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the Amex Order File ("AOF"). Generally, public customer market and marketable limit orders for up to seventy-five options contracts may be automatically executed through the Amex's AUTO-EX system.⁸ Recently, AOF, which handles limit orders routed to the specialist's book as well as those orders routed to AUTO-EX, was increased to allow for the entry of orders of up to 250 options contracts.⁹ Because AUTO-EX is only allowed to execute equity option orders and index orders of up to seventy-five contracts, any market and marketable limit orders for between seventy-five and 250 option contracts are generally

⁷ 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).

⁸ See Securities Exchange Act Release No. 43516 (November 3, 2000), 65 FR 69079 (November 15, 2000). The Amex codified its rules under Amex Rule 933, Commentary .02, regarding the maximum option order size eligibility for its AUTO-EX system. While the maximum permissible number of contracts in an index option order executable through AUTO-EX is generally seventy-five contracts, there are three exceptions: the Institutional, Japan and S&P MidCap 400 Indices allow ninety-nine contract orders. The Exchange proposes to increase the applicable parameter from ninety-nine to one hundred contracts for the Institutional, Japan and S&P MidCap 400 Indices to eliminate any potential for confusion over the permissible parameters applicable to AUTO-EX eligible orders for both equity and index options.

⁹ See Securities Exchange Act Release No. 42128 (November 10, 1999), 64 FR 63836 (November 22, 1999).

⁶ 17 CFR 200.30-2(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 43519 (November 3, 2000), 65 FR 69112.

⁴ See Securities Exchange Act Release No. 43660 (December 4, 2000), 65 FR 77942.

⁵ See Securities Exchange Act Release No. 43518 (November 3, 2000), 65 FR 69111 (November 15, 2000) (approving PCX proposal to increase the maximum size of index and equity option orders that may be automatically executed from fifty to seventy-five contracts).

⁶ The PCX 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).

routed by the AOF to the specialist's book.

The Amex proposes to amend Commentary .02 under Amex Rule 933 to increase the maximum AUTO-EX order size eligibility for equity and index option contracts orders from seventy-five to one hundred contracts. The proposed increase in permissible order size will be implemented on a case-by-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such as increase appropriate. Currently, the Amex posts applicable quote size parameters on its web page. Generally, these parameters provide that displayed quotes are for twenty contracts for equity options and for thirty contracts for index options and are set on a class-by-class basis. However, pursuant to Amex Rule 958A, the order size for AUTO-EX will remain at ten contracts for equity and index options, or such larger size currently in effect and as indicated on the Amex's web page.¹⁰

The Amex represents that it has sufficient systems capacity to accommodate implementation of the proposed increase in permissible order size and that AUTO-EX has been extremely successful in enhancing execution and operational efficiencies during emergency situations and during other non-emergency situations for certain options classes. The Amex believes that permitting automatic executions of orders for up to one hundred contracts will enhance its overall operational efficiency and give the Amex better means of competing with other options exchanges for order flow.

III. Discussion

After careful review, the Commission finds that the PCX and the Amex proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.¹¹ Among other provisions, Section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities

¹⁰ Amex Rule 958A, referred to as the "Firm Quote Rule," requires Exchange specialists to sell/buy at least ten contracts at the offer/bid which is displayed when a buy/sell order reaches the trading post where the option class is located for trading.

¹¹ The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

transactions; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public.¹²

While increasing the maximum order size limit from seventy-five to one hundred contracts for automatic execution eligibility by itself does not raise concerns under the Act, the Commission believes that this increase raises collateral issues that the PCX and the Amex, respectively, will need to monitor and address. Increasing the maximum order size for particular options classes will make a larger number of option orders eligible for the PCX and the Amex's automatic execution systems. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed onto the PCX's Auto-Ex and the Amex's AUTO-EX systems will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through each automatic execution system, the greater the risk market makers must be willing to accept. The Commission does not believe that, because the PCX's OFTC determines to approve orders as large as one hundred contracts as eligible for Auto-Ex, the OFTC or any other PCX committee or officials should disengage Auto-Ex more frequently by, for example, declaring a "fast" market. Similarly, the Commission does not believe that, because Amex floor governors and senior floor officials determine to approve orders as large as one hundred contracts as eligible for AUTO-EX, those officials or any other Amex officials or Amex committee should disengage AUTO-EX more frequently, for example, by declaring a "fast" market. Disengaging the PCX's or the Amex's automatic execution system can negatively affect investors by making it slower and less efficient to execute their option orders. It is the Commission's view that the PCX and the Amex, when increasing the maximum size of orders that can be sent through their respective automatic execution systems, should not disadvantage all customers—the vast majority of whom enter orders for less

¹² 15 U.S.C. 78f(b)(5).

than one hundred contracts—by making their automatic execution systems less reliable.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5).¹³

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ and the proposed rule changes (SR-PCX-00-18 and SR-Amex-00-57) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43898; File No. SR-PCX-01-02]

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

January 29, 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 January 3, 2001, the Pacific Exchange, Inc. ("PCX" 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. Amendment No. 1 to the proposed rule change was filed on January 5, 2001. Amendment No. 2 to the proposed rule change was filed on January 16, 2001.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹³ *Id.*

¹⁴ 14 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment Nos. 1 and 2, the PCX changed the filing number by withdrawal and re-filing, and corrected numbering and captions in the text of the proposed rule change. See letters from Hasan Abedi, Attorney, PCX, to Andrew Shipe, Attorney, Division of Market Regulation, Commission, dated January 4, 2001 and January 12, 2001 ("Amendment Nos. 1 and 2").