

others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.

The Commission further finds that: (1) By requiring that the underlying securities in a trust issued receipt be registered under Section 12 of the Act and listed on a national securities exchange or Nasdaq, and (2) by establishing minimum values for the number of outstanding receipts, average daily trading volume, average daily dollar volume, and public float, the Exchange's proposed listing criteria will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets for those trust issued receipts listed and traded pursuant to Rule 19b-4(e). The Commission believes that these listing criteria will help to ensure that no security underlying a trust issued receipt will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various trust issued receipts to meet investors' needs. The Commission further believes that these criteria should serve to ensure that the underlying securities of such trust issued receipts are well capitalized and actively traded, which will help to ensure that U.S. securities markets are not adversely affected by the listing and trading of new trust issued receipts under Rule 19b-4(e). Accordingly, the Commission finds that these criteria are consistent with section 6(b)(5) of the Act,<sup>21</sup> because they serve to prevent fraudulent or manipulative acts; promote just and equitable principles of trade; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.

Additionally, as the Commission noted in its previous review and approval of CHX and Amex Rules, the Exchange's delisting criteria allows it to consider the suspension of trading and the delisting of a trust issued receipt if an event occurs that makes further dealings in such securities inadvisable. This will give the Exchange flexibility to delist trust issued receipts if circumstances warrant.

The Commission notes that, in connection with its previous review and approval of CHX and Amex Rules, it approved similar applicable minimum price increments, surveillance procedures, and disclosure and prospectus delivery requirements for

trust issued receipts.<sup>22</sup> In accord with these previous findings, the Commission believes that PCX's proposed rules will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest. Further, the Commission believes that the proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risk of trading trust issued receipts.

Finally, PCX will file Form 19b-4(e) with the Commission within five business days of commencement of trading a trust issued receipt under the listing standards and will comply with all Rule 19b-4(e) recordkeeping requirements.

The Commission finds good cause for approving the proposed rule change (SR-PCX-2001-01) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the proposed rule change is similar to rules previously approved by the Commission for Amex and CHX, and that is concerns issues that previously have been the subject of a full comment period pursuant to section 19(b) of the Act.<sup>23</sup> The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the previous filings. Moreover, the Commission believes that approving the listing and trading of TIRs on the PCX will increase industry competitiveness by providing an additional venue for the trading of such issues, to the benefit of the investor. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,<sup>24</sup> to approve the proposal on an accelerated basis, and before expiration of the period for filing comments.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule change (SR-PCX-2001-01) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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<sup>22</sup> See note 22, *supra*.

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

<sup>24</sup> 15 U.S.C. 78f(b)(6).

<sup>25</sup> 15 U.S.C. 78s(6)(2).

<sup>26</sup> 17 CFR 200.30-3(a)(12)

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44216; File No. SR-PCX-00-48]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Auto-Ex Between-the-Quotes

April 24, 2001.

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 December 13, 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 and II below, which Items have been prepared by the Exchange. Amendment Nos. 1 and 2 to the proposed rule change were filed on January 3, and April 2, 2001, respectively.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve it on an accelerated basis.

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

The PCX is proposing to effect a change to its Automatic Execution System ("Auto-Ex") that will allow small-sized customer option orders that improve the PCX best bid or offer ("BBO") to be automatically executed by the Auto-Ex System. Below is the text of the proposed rule change. New text is in *italics*.

#### Pacific Exchange, Inc. Constitution and Rules

\* \* \* \* \*

#### Rule 6 Options Trading Automatic Execution System

##### ¶ 5231

Rule 6.87(a)-(1)—No change.

*(m) Auto-Ex-Between-the-Quotes. Lead Market Makers may, at their discretion, employ the Auto-Ex-Between-the-Quotes*

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

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

<sup>3</sup> In Amendment No. 1, the PCX re-designated the filing as a submission pursuant to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), rather than section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A). In Amendment No. 2, the PCX added rule text to provide that the Auto-Ex-Between-the-Quotes feature would not permit execution of orders at prices that trade through other markets. See letters from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated January 2, 2001 ("Amendment No. 1"), and March 29, 2001 ("Amendment No. 2").

<sup>21</sup> 15 U.S.C. 78f(b)(5).

feature of POETS. This feature will permit the automatic execution of limit orders entered into POETS that are: (i) to buy or sell five option contracts or less; and (ii) have limit prices that are between, but not equal to, the best bid or offering price then being disseminated on the PCX. Lead Market Makers must provide the members of the trading crowd with at least five minutes notice before activating this feature. If the feature is on, Market Makers are exempt from the mandatory log-on requirements of Rule 6.87(e)(4). This feature does not allow the execution of orders at prices that trade-through other markets.

\* \* \* \* \*

## 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

This proposal would allow for the automatic execution (by the Auto-Ex feature of POETS<sup>4</sup>) of small-sized customer limit orders that improve the PCX's disseminated best bid or offer. This feature will be employed at the discretion of the designated Lead Market Maker ("LMM") in the relevant option issue.

The new feature would operate in the following manner. Assume that the PCX best bid or offer ("BBO") is 5 bid, 5¼ asked. Next, assume that a customer limit order to purchase one option contract at 5½ is entered electronically on the PCX. If the new feature is *not* operating, the incoming order would be placed in the limit order book and displayed automatically, so that the new PCX BBO would be 5½ bid, 5¼ offered. However, if the new feature *is* operating, the incoming order would be executed by the Auto-Ex System before having an opportunity to be placed in the limit order book. Consequently, the customer's limit order would be immediately executed at its limit price and the PCX BBO would remain unchanged from 5 bid, 5¼ asked.

The PCX guarantees that customers will receive an execution on Auto-Ex, at the PCX's disseminated price, for all customer orders for up to 20 contracts (and in certain option issues, up to 75 contracts).<sup>5</sup> In addition, all customer orders entered electronically on the PCX are immediately displayed if they improve the PCX BBO, regardless of the size of the order. If a customer limit order to purchase one option contract is entered on the PCX and disseminated over the Options Price Reporting Authority the price (e.g., 5½ but not the size (one contract) will be disseminated to the public. Thus, for example, if the PCX (and national) best bid in a series is 5½ based solely upon a customer order to buy one contract, and a market order to sell 20 contracts is then entered on the PCX for automatic execution, the market order will be executed at 5½ (the PCX's disseminated price), with one contract trading against the customer limit order and 19 contracts trading against the members of the trading crowd who are logged on to Auto-Ex—even though they may be bidding 5 for that particular series.<sup>6</sup>

Currently, on the PCX, if a small customer limit order changes the PCX BBO, market-makers may manually execute that order to reduce their risk of having to trade additional contracts through Auto-Ex at the price of the customer limit order. This is a difficult process, however, in option issues and series that are so thinly-traded that the markets are not displayed on overhead screens on the trading floor, but are displayed on "buried" screens that have to be called up manually. The traders of such issues therefore may not be aware of an order to buy one contract at 5½, for example, that has just been entered. Before the traders realize it, another order, to sell 20 contracts at 5½, may have just been automatically executed on Auto-Ex, with 19 of those contracts being sold against those traders' accounts. However, if the new feature had been in operation, the order for one contract would have been immediately executed and the market-makers would not have been required to buy those 19 option contracts at 5½ when their quote was 5 bid.

The proposed rule change provides that Lead Market Makers may, at their discretion, employ the Auto-Ex-

Between-the-Quotes feature of POETS. It further provides that this feature would permit the automatic execution of limit orders entered into POETS that: (i) Are to buy or sell five option contracts or less; and (ii) have limit prices that are between, but not equal to, the best bid or offering price then being disseminated on the PCX. It further states that Lead Market Makers would be required to provide the members of the trading crowd with at least five minutes notice before activating this feature. If the feature is on, market-makers would be exempt from the mandatory log-on-requirements of PCX Rule 6.87(e)(4).<sup>7</sup> The rule change would allow the LMM to set the number of contracts (from between one to five) that may be automatically executed if the new feature is in operation.

The Exchange believes that the proposal would facilitate transactions in securities by eliminating the need to execute certain very small customer limit orders manually (as in currently the case). The Exchange also believes that the proposal would remove opportunities for manipulative acts and practices involving small customer orders that are entered for the sole purpose of changing the PCX BBO and/or the national best bid and offer ("NBBO").

#### 2. Statutory Basis

The Exchange believes that this proposal is consistent with section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of section 6(b)(5),<sup>9</sup> in particular, in that it is designated to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade.

### 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 on the proposed rule change were neither solicited nor received.

<sup>5</sup> The PCX provides such guarantees in all option series in order to remain competitive with the other options exchanges. See PCX Rules 6.86, 6.87.

<sup>6</sup> Likewise, if the PCX offered a guaranteed size of 75 contracts and the inbound order was an order to sell 75 contracts, then one contract would trade against the customer limit order and 74 contracts would trade against the members of the trading crowd.

<sup>7</sup> PCX Rule 6.87(e)(4) provides, in part, that a market maker who has been logged on to Auto-Ex in an option issue at any time during an expiration month must continue to be logged on to Auto-Ex in that issue whenever present in that trading crowd, until the close of business on the next Expiration Friday.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>4</sup> Pacific Option Exchange Trading System.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, 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 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-00-48 and should be submitted by May 22, 2001.

### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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.<sup>10</sup> In particular, the Commission believes that the proposal is consistent with sections 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the rules of an Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The Commission notes that, under current PCX Rules 6.86 and 6.87, market-makers taking part in Auto-Ex are required to be firm for a minimum of twenty or more contracts at the bid or offer displayed as the disseminated market quote. By the operation of these rules, therefore, a limit order for a small number of contracts, priced better than the disseminated quote, would establish the best bid or offer on the Exchange, and thereby commit the Exchange's market-makers to electronically execute

large numbers of contracts at prices better than those at which they are willing to trade.

The proposed rule change would alter this situation by permitting certain small limit orders (those for five or fewer contracts) to be automatically executed through operation of the PCX's Auto-Ex system. Under the proposal, LMMs would be permitted, at their discretion, and upon giving five minutes notice to the crowd, to activate this function. While the function is active, market-makers logged on to the Auto-Ex system would be excused from compliance with Exchange Rule 6.87(e)(4) and, therefore, permitted to log off the system. Small limit orders that improve the best bid or offer would then be executed, at their limit prices, against those market-makers who opt to remain logged on to Auto-Ex, or against the lead LMM. The intended effect would be to execute a small limit order rather than to display it, which potentially would allow a larger contra-side order to enter the POETS system, execute against it, and trigger the execution of multiple contracts by market-makers at prices they did not quote.

The Commission believes that the proposed feature should foster a fair and orderly market by preserving booked order priority, allowing for efficient Auto-Ex executions, and limiting the opportunity for "small order baiting."<sup>12</sup> The Commission notes that, according to PCX,<sup>13</sup> the proposed rule change would continue to permit limit orders in the Exchange's limit order book to trade against orders in the POETS/Auto-Ex system, thereby preserving the priority of booked orders.

The Commission finds good cause for approving the proposed rule change (SR-PCX-00-48) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The proposed rule change is designed to automatically execute small customer orders at prices better than the disseminated quote in certain circumstances. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,<sup>14</sup> to approve the proposal on an accelerated basis.

<sup>12</sup> "Small order baiting" occurs when a customer limit order for a minimal number of contracts is entered on one side of the market at a better price than the disseminated quote, thereby improving the quote. A large customer order on the other side of the market is then sent to the Auto-Ex to obtain the better price set by the small limit order.

<sup>13</sup> Telephone conversation between Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX, and Andrew Shipe, Attorney, Division of Market Regulation, SEC, April 24, 2001.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change, as amended, (SR-PCX-00-48) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44218; File No. SR-SCCP-00-06]

#### Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Stock Clearing Corporation of Philadelphia Relating to Proposed Fees for Processing of Units of Beneficial Interest in the Nasdaq 100 Trust, Series 1

April 25, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 8, 2000, Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") and on December 15, 2000, amended, the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by SCCP. 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

SCCP proposes to institute a fee for the processing of Units of Beneficial Interest in the Nasdaq 100 Trust, Series 1 ("Nasdaq-100 Index Tracking Stock").

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

In its filing with the Commission, SCCP 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

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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