

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44355; File No. SR-PCX-2000-21]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Pacific Exchange, Inc. Concerning Financial Arrangements of Options Floor Members

May 25, 2001.

I. Introduction

On July 12, 2000, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to eliminate PCX Rule 6.40, which pertains to financial arrangements of options floor members, and to adopt supplemental rules on options floor members who are trading for the same joint account.³ The PCX submitted Amendment No. 1 to the proposed rule change on November 29, 2000.⁴ The proposed rule change, as amended, was published for comment and appeared in the **Federal Register** on December 22, 2000.⁵ The Commission received no comments on the proposal. This order approves the PCX's proposed rule change, as amended.

II. Description of the Proposal

The PCX proposes to eliminate PCX Rule 6.40, which currently prohibits options floor members with financial arrangements from trading in the same trading crowd unless they have received either a short-term or a long-term exemption from the Options Floor Trading Committee.

The PCX proposes to replace PCX Rule 6.40 with PCX Rule 6.84(h), which governs options floor trading for joint accounts. Proposed subsection (h)(1) of PCX Rule 6.84 states that a joint account may be simultaneously represented in a trading crowd only by participants who are trading in person. It further provides that orders for a joint account may not

be entered in a trading crowd in which a participant of the joint account is trading in person for the joint account. If no participant is trading in person in the trading crowd for the joint account, then a floor broker may represent orders in the trading crowd on behalf of the joint account as long as the same option series is not concurrently represented by more than one floor broker.

Proposed subsection (h)(2) of PCX Rule 6.84 provides that market makers may alternate trading in-person between their individual and joint accounts while in the trading crowd. It further provides that market makers who alternate trading between accounts must ensure that while trading the joint account another participant does not enter orders through a floor broker for the joint account in the same trading crowd.

Proposed subsection (h)(3) of PCX Rule 6.84 provides that before beginning trading on behalf of a joint account, participants in the joint account are responsible for determining whether any floor brokers are representing orders in the same trading crowd on behalf of the same joint account.⁶

Proposed subsection (h)(4) of PCX Rule 6.84 provides that floor brokers may not represent a joint account of which they are a participant.

Proposed subsection (h)(5) of PCX Rule 6.84 provides that market makers who are trading in person in a trading crowd may not enter orders with a floor broker either for joint accounts in which they are participants or for their individual accounts.

Proposed subsection (h)(6) of PCX Rule 6.84 provides that the following trades are prohibited: (a) Trades between a joint account participant's individual account and a joint account in which that person is a participant; (b) trades between two joint accounts having common participants; and (c) trades in which the buyer and seller are representing the same joint account and are on opposite sides of the transaction.

PCX Rule 6.85 currently provides that a market maker and a floor broker who represents orders on behalf of the market maker may not be represented at a trading post concurrently. This principle against dual representation of a market maker account has been extended to cover joint accounts, as currently provided in PCX Rule 6.84, Commentary .04.⁷ The Exchange is now

proposing to adopt supplemental procedures that apply to situations where a joint account is being concurrently represented by more than one market maker representative, and to situations where a joint account is being represented by a floor broker.⁸

Finally, the Exchange is proposing to make technical changes to PCX Rule 4.18 and PCX Rule 6.84 by removing cross-references to PCX Rule 6.40.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules thereunder applicable to a national securities exchange, particularly section 6(b)(5) of the Act.⁹

PCX Rule 6.40 restricts PCX floor members who have financial arrangements with each other from trading in the same trading crowd at the same time in the absence of an exemption. The purpose of PCX Rule 6.40 is to prevent market makers who have financial arrangements with each other from unfairly dominating the market in any option class or series.

The Commission finds that it is appropriate for the PCX to eliminate PCX Rule 6.40 and to adopt new provisions under PCX Rule 6.84 imposing trading restrictions on PCX members who trade on behalf of the same joint account. The revisions to PCX Rule 6.84 specify the circumstances when orders may be entered or represented in a trading crowd on behalf of a joint account, and also prohibit certain trades between joint accounts. Moreover, the new provisions of PCX Rule 6.84 govern the practice of market makers alternating trading between their individual and joint accounts. Finally, as the PCX points out, PCX Rule 6.37(c)(2) precludes market makers, individually or as a group, from dominating the market irrespective of whether the parties have a financial arrangement with each other.

In view of the foregoing, the Commission believes that the

its alpha identification should appear in the 'executing firm' area. Additionally, a joint account participant may not bid, offer, purchase, sell, or enter orders in an option series in which a Floor Broker holds an order on behalf of the joint account or for the proprietary account of another participant in the joint account. Orders of joint account participants in a particular option series may not be concurrently represented by one or more Floor Brokers.

⁸ The Exchange believes that these procedures are substantially the same as those set forth in Regulatory Circular RG-98-94 of the Chicago Board Options Exchange (Joint Account Participant Trading in Equity Options) (September 9, 1998), CCH ¶5291.

⁹ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The PCX subsequently submitted the text of the proposed rule change language properly formatted for publication in the **Federal Register**. The reformatted version did not contain any substantive changes to the proposed rule change language. See letter dated November 1, 2000, from Michael D. Pierson, PCX, to Kelly Riley, Division of Market Regulation, SEC.

⁴ Letter dated November 29, 2000, from Michael D. Pierson, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC.

⁵ Securities Exchange Act Release No. 43714 (December 12, 2000), 65 FR 80970 (December 22, 2001).

⁶ Cf. PCX Rule 6.85, Commentary .01 (similar requirement applicable to market makers).

⁷ Commentary .04 of PCX Rule 6.84 provides:

Any order of a joint account participant, which is executed by a Floor Broker, shall be in accordance with procedures set forth in Rule 6.85, except that the joint account trading number with

elimination of PCX Rule 6.40, in conjunction with the codification of new paragraph (h) of PCX Rule 6.84, should help assure an appropriate balance between the need to impose reasonable trading restrictions for joint account participants and the need to allow PCX members flexibility to participate in trading crowds.

Accordingly, the Commission finds that the PCX's proposal is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest, as specified in section 6(b)(5) of the Act.¹⁰

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-PCX-00-21) is approved.¹²

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44345; File No. SR-PCX-99-48]

Self-Regulatory Organization's; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1, 2 and 3 Relating to Miscellaneous House-Keeping Amendments to Options Trading Rules

May 23, 2001.

I. Introduction

On November 5, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with 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 its options trading rules for house-keeping purposes.

The proposed rule change and Amendment No. 1 were published for

comment in the **Federal Register** on January 16, 2001.³ No comments were received on the proposal. The proposal was amended on January 11 and April 12, 2001.⁴ In this order, the Commission is approving the proposed rule change, as amended.

II. Description of the Proposal

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.

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, and in particular, with the requirements of section 6(b)(5).⁵ Specifically, the Commission finds that updating and clarifying rules and codifying current policies and procedures will enhance the ability of PCX members to comply with PCX's rules thereby promoting just and equitable principles of trade, fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, protecting investors and the public interest.

The Commission also considers the proposal as it relates to the PCX's minor rule violation plan to be consistent with section 6(b)(5),⁶ which requires that members and persons associated with members be appropriately disciplined for violations of Exchange Rules.

IV. Conclusion

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,⁷ that the

³ Securities Exchange Act Release No. 43823 (January 9, 2001), 66 FR 3633.

⁴ See letters from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX to Heather Traeger, Attorney Adviser, Division of Market Regulation ("Division"), SEC, dated January 10 and April 11, 2001 ("Amendment Nos. 2 and 3," respectively). In Amendment No. 2, proposed rules 10.13(h)(35) and 10.13(k)(i)(35) are renumbered as 10.13(h)(38) and 10.13(k)(i)(38) because Rules 10.13(h)(35), (36) and (37) already exist. In Amendment No. 3, Rules 10.13(h)(30) and 10.13(k)(i)(30), which address fines for violations of option floor trading restrictions on members with financial arrangements (Rule 6.40(b)), are eliminated to reflect rule changes made by other filings. Also rules affected by the removal of Rules 10.13(h)(30) and 10.13(k)(i)(30) are renumbered. These are technical amendments that do not need to be published for comment.

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78f(b)(6).

⁷ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-PCX-99-48), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44362; File No. SR-Phlx-2001-56]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend Its Pilot Program to Disengage Its Automatic Execution System ("AUTO-X") for a Period of Thirty Seconds After the Number of Contracts Automatically Executed in a Given Option Meets the AUTO-X Minimum Guarantee for That Option

May 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 May 17, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis, for a six-month pilot, scheduled to end on May 31, 2001.

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

The Phlx proposes to extend, for an additional six months, its pilot program effecting a systems change to AUTO-X, the automatic execution feature of the Exchange's Automated Options Market System ("AUTOM"),³ that would

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floors. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X.

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(2).

¹² In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). 17 CFR 200.30-3(a)(12).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.