

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>52</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45641; File No. SR-PCX-2001-48]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Increase to Two Hundred Fifty Contracts the Maximum Permissible Number of Equity and Index Option Contracts Executable Through Auto-Ex

March 25, 2002.

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 November 27, 2001, 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 and II below, which Items have been prepared by the PCX. The PCX filed Amendment No. 1 on December 5, 2001.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal 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 increase to 250 contracts the maximum size of equity and index option contracts that may be designated for automatic execution.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deletions are in brackets.

\* \* \* \* \*

#### *Automatic Execution System*

Rule 6.87(a)-(b)(4)—No change.

(b)(5) The [Options Floor Trading Committee ("OFTC")] *OFTC* shall determine the size of orders that are eligible to be executed on Auto-Ex. Although the order size parameter may be changed on an issue-by-issue basis by the OFTC, the maximum order size for execution through Auto-Ex is as follows:

(A) Equity Options: the maximum order size for execution through Auto-Ex for equity options is [one hundred (100)] 250 contracts;

(B) Index Options: the maximum order size for execution through Auto-Ex is [one hundred (100)] 250 contracts. [for:

- (i) The PSE Technology Index;
- (ii) the Wilshire Small Cap Index; and
- (iii) the Morgan Stanley Emerging Growth Index.]

(6)—No change.

(c)-(p)—No change.

\* \* \* \* \*

#### 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

The Exchange's automatic execution system ("Auto-Ex") automatically executes public customer market and marketable limit orders within certain size parameters. The Exchange represents that Auto-Ex has proven to be a credible system offering prompt and efficient automatic trade executions at the disseminated, quoted prices. PCX Rule 6.87(b) currently provides that the Exchange's Options Floor Trading Committee ("OFTC") shall determine, on an issue-by-issue basis, the size of orders that are eligible to be executed through Auto-Ex. The maximum order size for execution through Auto-Ex is currently 100 contracts for both equity and index options.<sup>4</sup> The Exchange 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 250 contracts.

The Exchange believes that increasing the number of option contracts executable through Auto-Ex to 250 contracts will enable the Exchange to more effectively and efficiently manage increased order flow in actively traded option issues consistent with its obligations under the Act. The Exchange believes that this increase will help it to meet the changing needs of customers in the marketplace and give the Exchange better means of competing with other options exchanges for order flow, particularly in multiply traded issues. In addition, the Exchange represents that this increase should bring the speed and efficiency of automated execution to a greater number of retail orders. The Exchange represents that it further believes that its systems capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from implementation of the proposed rule change.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)<sup>5</sup> of the Act, in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

##### 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

No written comments were solicited or received with respect to the proposed rule change.

#### III. 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

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>52</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See letter from Mia S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 4, 2001 ("Amendment No. 1"). In Amendment No. 1, the PCX revised the rule text of the proposed rule change to reflect current PCX Rule 6.87.

<sup>4</sup> See Securities Exchange Act Release No. 43887 (January 25, 2001), 66 FR 8831 (February 2, 2001) (approving PCX proposal to increase the maximum size of index and equity option orders that may be automatically executed through Auto-Ex to 100 contracts).

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-2001-48 and should be submitted by April 22, 2002.

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

After careful review, the Commission finds that the proposed rule change, as amended, is 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. 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 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 interest.<sup>7</sup>

While increasing the maximum order size limit from 100 contracts to 250 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 will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for Auto-Ex. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed on to Auto-Ex 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 Auto-Ex, 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 250 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 an "unusual market condition."<sup>8</sup> Disengaging Auto-Ex can negatively affect investors by making it slower and less efficient to execute their orders. It is the Commission's view that the PCX, when increasing the maximum size of orders that can be sent through Auto-Ex, should not disadvantage all customers—the vast majority of whom enter orders for less than 250 contracts—by making their automatic execution systems less reliable.

In addition, pursuant to section 19(b)(2)<sup>9</sup> of the Act, the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**.<sup>10</sup> The Commission believes that granting accelerated approval will provide the PCX with flexibility to compete for order flow with other exchanges immediately.<sup>11</sup>

#### V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and

<sup>8</sup> The PCX has filed a proposed rule change (File No. SR-PCX-2001-13) with the Commission that would specify the Exchange's procedures governing the disengagement of Auto-Ex for "unusual market conditions," and would require documentation of the reasons for any action to disengage Auto-Ex to operate in a manner other than the usual manner. The proposed rule change was filed pursuant to the Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) (File No. 3-10282) and is pending with the Commission.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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

<sup>11</sup> See Securities Exchange Act Release No. 45628 (March 22, 2002) (order approving an increase to 250 contracts the maximum permissible number of equity and index option contracts executable through AUTO-EX); see also Securities Exchange Act Release No. 45629 (March 22, 2002) (order approving an increase to 250 contracts in the maximum guarantee size for AUTO-X orders in options overlying the QQQs).

regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5) of the Act.<sup>12</sup>

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-PCX-2001-48), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## DEPARTMENT OF STATE

### Office of Global Educational Programs (ECA/A/S)

[Public Notice 3967]

#### 60-Day Notice of Proposed Information Collection: Fulbright Teacher and Administrator Exchange Program Application Package; OMB No. 1405-0114

**ACTION:** Notice.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

*Type of Request:* Reinstatement with change of a previously approved collection for which approval has expired.

*Originating Office:* Office of Global Educational Programs (ECA/A/S).

*Title of Information Collection:* Fulbright Teacher and Administrator Exchange Program Application Package.

*Frequency:* Annual.

*Form Number:*

*Respondents:* Educators desiring to participate in the Fulbright Teacher and Administrator Exchange Program.

*Estimated Number of Respondents:* 862.

*Average Hours Per Response:* 2.

*Total Estimated Burden:* 1724.

Public comments are being solicited to permit the agency to:

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>7</sup> 15 U.S.C. 78f(b)(5).