

time when its strike price is equal to or greater than the fair market value of the underlying stock, in exchange for another option, restricted stock, or other equity, unless the cancellation and exchange occurs in connection with a merger, acquisition, spin-off or other similar corporate transaction. A cancellation and exchange described in clause (3) of the preceding sentence will be considered a repricing regardless of whether the option, restricted stock or other equity is delivered 2 simultaneously with the cancellation, regardless of whether it is treated as a repricing under generally accepted accounting principles, and regardless of whether it is voluntary on the part of the option holder.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46684; File No. SR-PCX-2002-69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Adopt a New Interpretation Under PCXE Rule 7.37 in Securities Subject to the ITS Plan Exemption

October 17, 2002.

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 October 15, 2002, 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 PCX. PCX filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 Exchange, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend certain rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, to conform to the Commission's order granting a *de minimis* exemption from the trade-through restrictions of the Intermarket Trading System ("ITS") Plan in certain exchange-traded funds ("ETFs"). Below is the text of the proposed rule change. New text is in *italics*, while deletions appear in [brackets].

* * * * *

PCX Equities, Inc.

Rule 7—Equities Trading Orders and Modifiers

Rule 7.31(a)-(d)—No change.

(e) Immediate-or-Cancel Order. A market or limit order that is to be executed in whole or in part as soon as such order is received, and the portion not so executed is to be treated as canceled. *An immediate-or-cancel order for Trade-Through Exempt Securities (as defined in Rule 7.37) will be permitted to trade at a price no more than three cents (\$0.03) away from the NBBO displayed in the Consolidated Quote.*

(f)-(u)—No change.

(v) NOW Order. A Limited Price Order that is to be executed in whole or in part on the Corporation, and the portion not so executed shall be routed pursuant to Rule 7.37(d) only to one or more NOW Recipients for immediate execution as soon as the order is received by the NOW Recipient. Any portion not immediately executed by the NOW Recipient shall be cancelled. If a NOW Order is not marketable when it is submitted to the Corporation, it shall be cancelled. *NOW Orders may not be Directed Orders. NOW Orders for Trade-Through Exempt Securities (as defined in Rule 7.37) may be routed and executed at a price that is no more than three cents (\$0.03) away from the NBBO displayed in the Consolidated Quote.*

(w) PNP Order (Post No Preference). A limit order to buy or sell that is to be executed in whole or in part on the Corporation, and the portion not so executed is to be ranked in the Arca Book, without routing any portion of the order to another market center; provided, however, the Corporation shall cancel a PNP Order that would lock or cross the NBBO. *PNP Orders for Trade-Through Exempt Securities (as defined in Rule 7.37) will not be canceled at the time of order entry if*

such orders would lock or cross the NBBO. PNP Orders in Trade-Through Exempt Securities may be executed at a price no more than three cents (\$0.03) away from the NBBO displayed in the Consolidated Quote.

(x)—No change.

* * * * *

Order Execution

Rule 7.37. Subject to the restrictions on short sales under Rule 10a-1 under the Exchange Act, like-priced orders, bids and offers shall be matched for execution by following Steps 1 through 5 in this Rule; provided, however, for an execution to occur in any Order Process, the price must be equal to or better than the NBBO, unless the Archipelago Exchange has routed orders to [all] away markets at the NBBO, where applicable (however, a User may submit a NOW Order or Primary Only Order that may be routed to an away market without consideration of the NBBO). *This rule will not apply to securities that are subject to an exemption from the Commission under SEC Rule 11Aa3-2(f) to the trade-through provisions of the ITS Plan ("Trade-Through Exempt Securities"). Orders in Trade-Through Exempt Securities designated as IOC, NOW and PNP orders will be effected at a price no more than three cents (\$0.03) away from the best bid and offer quoted in CQS.*

(a)-(e)—No change.

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

In its filing with the Commission, 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 IV 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

On August 28, 2002, the Securities and Exchange Commission issued an order granting a *de minimis* exemption from the trade-through restrictions of the Intermarket Trading System ("ITS") Plan in exchange-traded funds ("ETFs") tracking the Nasdaq-100 Index ("QQQ"), the Standard & Poor's 500 Index

¹ 17 CFR 200.30-2(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

(“SPY”), and the Dow Jones Industrial Average (“DIA”) (the “Order”).⁵ The exemption became operative on September 4, 2002, and covers transactions in the aforementioned ETFs that are executed no more than three cents (\$0.03) away from the national best bid and offer (“NBBO”) displayed in the Consolidated Quote. As a result of the Commission’s Order, the Exchange proposes to make conforming changes to certain rules governing the ArcaEx trading facility. The proposed rule changes are summarized below.

The Exchange’s current rules governing the order execution processes for orders in the ArcaEx Book⁶ are set forth in PCXE Rule 7.37. Presently, Rule 7.37 provides, in part, that for an execution to occur in any Order Process, the price must be equal to or better than the NBBO. The Exchange is proposing to add interpretive language to make it clear to ETP Holders and Sponsored Participants (collectively “Users”) that the requirements of this Rule will not apply to orders designated as Immediate-or-Cancel (“IOC”), NOW and Post No Preference (“PNP”) in securities that are subject to an exemption from the Commission under SEC Rule 11Aa3-2(f) to the trade-through provisions of the ITS Plan, provided, however, that any resulting executions will be at a price no more than three cents \$0.03 away from the national best bid and offer (“NBBO”) displayed in the Consolidated Quote.

The Exchange is also proposing to amend the definitions of certain order types, as follows: First, the Exchange is proposing to modify the definition of the IOC Order as set forth in PCXE Rule 7.31(e) by adding the following text: “An immediate-or-cancel order for Trade-Through Exempt Securities (as defined in Rule 7.37) will be permitted to trade at a price no more than three cents (\$0.03) away from the NBBO displayed in the Consolidated Quote.” Second, the Exchange is proposing to amend Rule 7.31(v) relating to NOW Orders by adding the following text: “NOW Orders for Trade-Through Exempt Securities (as defined in Rule 7.37) may be routed and executed at a price that is no more than three cents (\$0.03) away from the NBBO displayed

in the Consolidated Quote.” Finally, the Exchange proposes to amend the definition of the PNP Order as set forth in PCXE Rule 7.31(w) by adding the following text: “PNP Orders for Trade-Through Exempt Securities (as defined in Rule 7.37) will not be canceled at the time of order entry if such orders would lock or cross the NBBO. PNP Orders in Trade-Through Exempt Securities may be executed at a price no more than three cents (\$0.03) away from the NBBO displayed in the Consolidated Quote.”

The Exchange believes that these proposed rule changes are consistent with the terms and spirit of the Commission’s Order and will allow market participants to benefit from this exemption.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁷ of the Act, in general, and further the objectives of Section 6(b)(5),⁸ in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market 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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PCX has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section

19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b-4(f)(6)(iii) under the Act,¹¹ the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. The PCX has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.¹² Waiving the pre-filing requirement and accelerating the operative date will provide investors increased liquidity and increased choice of execution venues while limiting the possibility that investors will receive significantly inferior prices. For these reasons, the Commission designates that the proposed rule change as effective and operative immediately.

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

⁵ See Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 27, 2002).

⁶ ArcaEx maintains an electronic file of orders, called the ArcaEx Book, through which orders are displayed and matched. The ArcaEx Book is divided into four components, called processes—the Directed Order Process, the Display Order Process, the Working Order Process, and the Tracking Order Process. See PCXE Rule 7.37 for a detailed description of these order execution processes.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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. PCX-2002-69 and should be submitted by November 15, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-27226 Filed 10-24-02; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

Cost-of-Living Increase and Other Determinations for 2003

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: The Commissioner has determined—

(1) A 1.4 percent cost-of-living increase in Social Security benefits under title II of the Social Security Act (the Act), effective for December 2002;

(2) An increase in the Federal Supplemental Security Income (SSI) monthly benefit amounts under title XVI of the Act for 2003 to \$552 for an eligible individual, \$829 for an eligible individual with an eligible spouse, and \$277 for an essential person;

(3) The student earned income exclusion to be \$1,340 per month in 2003 but not more than \$5,410 in all of 2003;

(4) The dollar fee limit for services performed as a representative payee to be \$30 per month (\$58 per month in the case of a beneficiary who is disabled and has an alcoholism or drug addiction condition that leaves him or her incapable of managing benefits) in 2003;

(5) The national average wage index for 2001 to be \$32,921.92;

(6) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base to be \$87,000 for remuneration paid in 2003 and self-employment income earned in taxable years beginning in 2003;

(7) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 2003 to be \$960 and \$2,560;

(8) The dollar amounts ("bend points") used in the Primary Insurance Amount benefit formula for workers

who become eligible for benefits, or who die before becoming eligible, in 2003 to be \$606 and \$3,653;

(9) The dollar amounts ("bend points") used in the formula for computing maximum family benefits for workers who become eligible for benefits, or who die before becoming eligible, in 2003 to be \$774, \$1,118, and \$1,458;

(10) The amount of taxable earnings a person must have to be credited with a quarter of coverage in 2003 to be \$890;

(11) The "old-law" contribution and benefit base to be \$64,500 for 2003;

(12) The monthly amount deemed to constitute substantial gainful activity for statutorily blind individuals in 2003 to be \$1,330, and the corresponding amount for non-blind disabled persons to be \$800;

(13) The earnings threshold establishing a month as a part of a trial work period to be \$570 for 2003; and

(14) Coverage thresholds for 2003 to be \$1,400 for domestic workers and \$1,200 for election workers.

FOR FURTHER INFORMATION CONTACT:

Jeffrey L. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-3013. Information relating to this announcement is available on our Internet site at <http://www.ssa.gov/OACT/COLA/index.html>. For information on eligibility or filing for benefits, call our national toll-free number 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.ssa.gov>.

SUPPLEMENTARY INFORMATION:

In accordance with the Act, the Commissioner must publish within 45 days after the close of the third calendar quarter of 2002 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Commissioner must publish on or before November 1 the national average wage index for 2001 (section 215(a)(1)(D)), the OASDI fund ratio for 2002 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2003 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 2003 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2003 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 2003 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a

worker who first becomes eligible for old-age benefits or dies in 2003 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

The next cost-of-living increase, or automatic benefit increase, is 1.4 percent for benefits under titles II and XVI of the Act. Under title II, OASDI benefits will increase by 1.4 percent for individuals eligible for December 2002 benefits, payable in January 2003. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 1.4 percent effective for payments made for the month of January 2003 but paid on December 31, 2002. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f).

Automatic Benefit Increase

Computation

Under section 215(i) of the Act, the third calendar quarter of 2002 is a cost-of-living computation quarter for all the purposes of the Act. The Commissioner is, therefore, required to increase benefits, effective for December 2002, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 2002, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 2001 to the third quarter of 2002.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. We round the arithmetic mean, if necessary, to the nearest 0.1. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 2001, is: for July 2001, 173.8; for August 2001, 173.8; and for September 2001, 174.8. The arithmetic mean for this calendar quarter is 174.1. The corresponding Consumer Price Index for each month in the quarter ending September 30, 2002, is: for July 2002, 176.1; for August 2002, 176.6; and for September 2002, 177.0. The arithmetic mean for this calendar quarter is 176.6. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 2002, exceeds that for the calendar quarter ending September 30, 2001 by 1.4 percent (rounded to the

¹³ 17 CFR 200.30-3(a)(12).