

does not foresee that market participants will encounter practical difficulties in complying with this strict reporting requirement.

The proposed change to paragraph (d) is intended to protect customers with non-discretionary accounts by making it clear that the clearing members, exchange members and access persons maintaining such accounts must obtain their customers' consent prior to executing customer orders by means of a block trade. OneChicago believes that customer protection in this area is warranted because block trades may be executed at prices that differ from those prevailing in the corresponding contract markets at the time.

The proposed changes to paragraphs (e) and (f) of OneChicago Rule 417 are intended to clarify that the restrictions on engaging in certain transactions related to a block trade prohibit all natural persons associated with market participants, including access persons, from taking advantage of non-public information with respect to a block trade, by entering orders for execution through OneChicago for any account that he or she controls if such orders relate to the same underlying securities as the block trade in question.

2. Statutory Basis

OneChicago has filed this proposed rule change pursuant to section 19(b)(7) of the Act.⁵ OneChicago believes that the proposed rule change is authorized by, and consistent with, section 6(b)(5)⁶ of the Act because it is designed 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

OneChicago believes that the proposed rule change is inherently pro-competitive as it is designed to ensure that: (i) Relevant market information becomes available to the public as expeditiously as possible; (ii) customers with non-discretionary accounts are protected from unauthorized block trades; and (iii) natural persons associated with market participants are prevented from taking advantage of any non-public information with respect to block trades.

C. Self-Regulatory Organization's Statement on Comments on Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited.

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

Pursuant to section 19(b)(7)(B) of the Act,⁷ the proposed rule change, as filed with the Commission on November 7, 2002, became effective on that date. Amendment No. 1 to the proposed rule change became effective on December 13, 2002. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.⁸

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rules conflict with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules 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 these filings will also be available for inspection and copying at the principal office of OneChicago. Electronically submitted comments will be posted on the Commission's internet Web site (<http://www.sec.gov>). All submissions should refer to File No. SR-OC-2002-03 and should be submitted by January 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02-32642 Filed 12-26-02; 8:45 am]

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⁷ 15 U.S.C. 78s(b)(7)(B).

⁸ 15 U.S.C. 78s(b)(1).

⁹ 17 CFR 200.30-3(a)(7).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47036; File No. SR-PCX-2002-53]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change Relating to New Order Types

December 19, 2002.

I. Introduction

On August 5, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") 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 proposed rule change regarding new order types. On September 26, 2002, the Exchange's rule proposal was published for comment in the *Federal Register*.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

PCX, through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, to: (i) Adopt two new order types—a Midpoint Crossing Order and a Midpoint Directed Fill; and (ii) add minimum trading differentials for these new order types separate from other orders types.

The two new order types would allow Equity Trading Permit ("ETP") Holders and Sponsored Participants (collectively "Users") to receive executions priced between the national best bid and offer ("NBBO") at price increments finer than the minimum trading differential permitted under the Exchange's current rules.

A Midpoint Cross Order would be a Cross Order⁴ that is priced at the midpoint of the NBBO. If at the time of order entry a locked or crossed market exists in the security, the ArcaEx trading system would reject the Midpoint Cross Order. A Midpoint Directed Fill would be a Directed Fill⁵ that is priced at the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 46515 (September 19, 2002), 67 FR 60709.

⁴ A Cross Order is defined as a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the cross price), subject to price improvement requirements. See PCXE Rule 7.31(s).

⁵ See PCXE Rule 7.31(j) (definition of "Directed Fill").

⁵ 15 U.S.C. 78s(b)(7).

⁶ 15 U.S.C. 78f(b)(5).

midpoint of the NBBO. When a locked or crossed market exists in the security, the inbound Directed Order would bypass the Directed Order Process⁶ and immediately enter the Display Order Process for execution.⁷ In the Directed Order Process, the User's Directed Order would be executed against a Directed Fill, which is the order of the User's designated market maker. Specifically, for a market maker to interact with incoming Directed Orders, the market maker must submit a standing instruction to ArcaEx for the parameters of a Directed Fill, including, but not limited to, the size of the order, the Users who may send such market maker a Directed Order, the price improvement algorithm and the period of time the instruction is effective. The proposed Midpoint Directed Fill would be an additional feature of the ArcaEx system's price improvement algorithm, which would enable market makers to match automatically against incoming Directed Orders at the midpoint price between the NBBO.

The Exchange's current minimum price variation for securities traded on the ArcaEx is \$0.01. The minimum price improvement increment ("MPII") on ArcaEx is equal to \$0.01 or ten percent of the NBBO spread, whichever is greater.⁸ Under the proposal, Midpoint Cross Orders and Midpoint Directed Fills could receive executions at price increments finer than the minimum trading differential currently permitted under the Exchange's rules. In order to implement these new order types, the Exchange proposes to add interpretive language to address situations where the midpoint of the NBBO bid/ask differential is a subpenny price (e.g., the midpoint of an NBBO of \$20—\$20.03 is \$20.015). In such circumstances, the proposed rule would permit Midpoint Cross Orders and Midpoint Directed Fills to be executed and reported in increments as small as one-half of the

minimum price variation (i.e., as \$0.005).⁹ Furthermore, in situations where the NBBO bid/ask differential is one minimum price variation (i.e., \$0.01), Midpoint Cross Orders and Midpoint Directed Fills may be executed in increments of one-half of the minimum price variation (i.e., as \$0.005), as an exception to the current MPII. In addition, the Exchange proposes minor technical changes to eliminate obsolete references and to change the text so that Rule 7.6(a), Commentary .05 would conform to Rule 7.6(a), Commentary .03.

III. Discussion

After careful review, 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 exchange¹⁰ and, in particular, the requirements of Section 6 of the Act.¹¹ Further, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹² in that the rules have been designed to remove impediments to and to perfect the mechanism of a free and open market and a national market system, while also protecting investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (File No. SR-PCX-2002-53), is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02-32644 Filed 12-26-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47065; File No. SR-PCX-2002-72]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes in Marketing Fees

December 20, 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 November 25, 2002, the Pacific Exchange, Inc. ("PCX") 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 PCX. 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 PCX is proposing to change its marketing fee for certain options and to adopt new marketing fees for recently listed options. The text of the proposed change is available at the PCX and at the Commission.

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 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

Purpose

The PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from \$0 to \$1.00 per contract on a per-issue basis.³ The PCX segregates the funds from this fee by trading post and makes

⁶ The Directed Order Process is the first step in the ArcaEx execution algorithm. Through this Process, Users may direct an order to a Market Maker with whom that they have a relationship and the Market Maker may execute the order. To access this process, the User must submit a Directed Order, which is a market or limit order to buy or sell that has been directed to the a particular market maker by the User. See PCXE Rule 7.37(a) (description of "Directed Order Process").

⁷ The Display Order Process is the second step in the ArcaEx execution algorithm. In this process, the ArcaEx system matches an incoming marketable order against orders in the Display Order Process at the display price of the resident order for the total size available at that price or for the size of the incoming order. See PCXE Rule 7.37(b) (description of "Display Order Process").

⁸ See PCXE Rule 7.6(a), Commentary .06. Under current PCXE rules, the MPII requirements must be satisfied in the execution of Cross Orders and Directed Orders. See PCXE Rules 7.31(j) and (s).

⁹ See proposed PCXE Rule 7.6(a), Commentary .07.

¹⁰ The Commission has considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

¹³ *Id.*

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 44830 (September 21, 2001), 66 FR 49728 (September 28, 2001) (SR-PCX-2001-37).