

It would not be mandatory that all limit orders of 1000 shares or less be entered as ILA orders; rather, the member organization entering the order can choose to enter an ILA order when such member organization believes that the speed and certainty of an execution at the Exchange's published bid or offer price is in its customer's best interest. In such a case, the member organization would enter an ILA order priced at the Exchange's published offer price (in the case of an ILA order to buy), or an ILA order priced at the Exchange's published bid price (in the case of an ILA order to sell). The ILA order would then receive an instant execution without being exposed to the auction market, provided the bid or offer is still available. If the ILA feature is not available for any reason, the ILA order will be cancelled. Moreover, any member organization that believes in any particular case that the customer's interests would be best served by affording the customer's order the opportunity for price improvement may enter a limit or market order into BEACON for representation in the auction market, rather than an ILA order.

ILA orders will be reported to the Consolidated Tape Association with a unique identifier, a ".e", to denote that they were instantly executed. The Exchange's published bid or offer would be automatically decremented to the extent of the size of the ILA order to reflect the ILA execution. The contra side of the ILA order would be the trading interest reflected in the Exchange's bid or offer, with such interest participating in the execution according to the Exchange's auction market principles of priority and parity. Additionally, if an inbound ITS commitment has been processed and apportioned according to the rules set forth in Chapter XXXI, Intermarket Trading System, based on orders on the BSE book, an ILA execution cannot take place against that same order. Finally, any ILA order, which is for a size greater than that displayed in the BSE book will receive an instant execution up to the

displayed size of the BSE quotation. Any excess will automatically be cancelled.

The Exchange's proposal would implement a new set of rules, set forth in Section 8 of Chapter XXXIII, BEACON⁵, and an addition to Chapter 1, Definitions, Section 3, Orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act⁶ and Section 6(b)(5) of the Act,⁷ in particular, 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 a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between brokers or dealers.

The Exchange also believes that the proposed rule change is designed to support the principles of section 11A(a)(1) of the Act⁸ in that it seeks to assure economically efficient execution of securities transactions, makes it practicable for brokers to execute investor's orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 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 Exchange. All submissions should refer to File No. SR-BSE-2003-08 and should be submitted by November 5, 2003.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48595; File No. SR-PCX-2003-56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to an Amendment to the PCX Plus Electronic Book Execution Feature and Implementation Date

October 6, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

BSE published ask price. Second, the NYSE rule includes an exclusion, relating to an automatic execution trade being more than 5 cents away from the previous trade in that security executed on the NYSE. Third, the NYSE rule requires the display of any unexecuted portion of a Direct+ order or any Direct+ orders that cannot be immediately filled as limit orders regular way. The BSE proposal requires that such orders be canceled if not immediately filled. Finally, the BSE proposal includes an exclusion for such instances when the national best bid or offer spread is \$0.25 or more. Teleconference between John Boese, Vice President, Legal and Compliance, BSE, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (September 30, 2003).

⁵ The existing language in this Section will be deleted, as it applied to Y2K systems testing requirements, and replaced with provisions detailing the instant proposal.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 17 U.S.C. 78k-1(a)(1).

⁹ 17 CFR 200.30-3(a)(12).

("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 3, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") 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 amend PCX Rule 6.76(b)(4)(B)(ii), governing Electronic Book Executions ("EBEs"), in order to restrict a Floor Broker from effecting transactions (via the System Alert Message, "SAMs") for its own account or the account of associated persons. The Exchange is also proposing to amend PCX Rule 6.90(b) in order to modify the implementation date of PCX Plus. The text of the proposed rule change is set forth below. Additions are in *italics*; deletions are in *brackets*.

* * * * *

Rules of the Board of Governors of the Pacific Exchange, Inc.

Rule 6 Options Trading

PCX Plus Priority and Order Allocation Procedures

Rule 6.76(a)—No change.

(b)(1)–(3)—No change.

(4)(A)—No change.

(B)(i)—No change.

(ii)—the balance of the Consolidated Book at that price will be displayed for three seconds (via a System Alert Message—SAM) to all "Crowd Participants" (as defined in Rule 6.1(b)(38)).

(a) A Floor Broker holding an order for an account in which such broker has an interest, the account of an associated person, or an account with respect to which the Floor Broker or an associated person thereof exercises investment discretion, shall not be eligible for participation in Electronic Book Executions.

(iii)–(v)—No change.

(5)—No change.

(c)–(d)—No change.

Commentary:

01—No change.

.02 For purposes of Rule 6.76(b)(4)(B)(ii), during the initial rollout of PCX Plus, the Floor Broker Hand Held terminals will not have the functionality to support Floor Broker

interaction with EBEs via SAMs. Such functionality will become available to Floor Brokers on or before June 30, 2004. The PCX will file a proposed rule change with the Commission when the Floor Broker Hand Held terminals have such functionality.

* * * * *

Rule 6.90(a)—No Change.

(b) System Phase-In and Applicability of the Rules. The PCX estimates that the rules applicable to PCX Plus will be implemented gradually on an issue-by-issue basis beginning *October 6, 2003* [December 15, 2003], and will become completely operative and applicable to all options issues by June 30, 2004. At that time, the rules relating to PCX Plus will supersede existing rules that are inapplicable to the new trading environment.

* * * * *

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

1. Purpose

The Exchange is proposing to amend PCX Rule 6.76(b)(4)(B)(ii), governing EBEs, in order to restrict Floor Broker from effecting transactions (via SAMS) for its own account or the account of associated persons, or an account with respect to which a Floor Broker exercises investment discretion.

PCX Rule 6.76(b)(4) Governs Market Makers' interaction with orders in the Consolidated Book. Under this rule, when a Market Maker initiates a trade with the Consolidated Book, that Market Maker receives an allocation of the order while the balances of the order in the Book is allocated on a size pro rata basis to all "Crowd"³ who respond to the SAM within three seconds. Initially, the Floor Broker Hand Held terminals will

³ See PCX Rule 6.1(b)(38). Crowd Participants include Market Makers appointed to an option issue and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular options series.

not have the functionality to support Floor Broker interaction with EBEs via SAMS.⁴ This rule change is designed to ensure Broker compliance with Section 11(a) of Act⁵ for the anticipated implementation of such functionality.

In adopting this provision Floor Brokers, the Exchange recognizes that allowing Floor Brokers to represent certain broker dealer orders could raise issues under the Act. By prohibiting Floor Broker representation of proprietary or affiliated orders, the PCX believes that this rule will go beyond the requirements of Section 11(a) of the Act.

The Exchange also proposes to amend PCX Rule 6.90(b), which governs PCX Plus' implementation date. The Exchange wishes to amend the phase-in implementation date to "October 6, 2003" from the originally anticipated implementation date of "December 15, 2003." As stated in the rule, the Exchange expects that PCX Plus will become completely operative and applicable to all options issues by June 30, 2004.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ 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.

⁴ The PCX will file a proposed rule change with the Commission when the Floor Broker Hand Held terminals have such functionality.

⁵ 15 U.S.C. 78k(a). Section 11(a) prohibits a member of a national securities exchange from effecting transactions on the exchange for its own account, the account of associated person, or an account in which it or an associated person exercises investment discretion. However, Section 11(a) also includes a number of exceptions to its general prohibition on proprietary trading. Most notably, Section 11(a)(1)(G) allows an exception when a member follows the conditions set forth in Rule 11a1-1(T) (e.g., yield priority, parity, and precedence in execution of such orders).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6)⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date and waive the five day pre-filing requirement so that the proposed rule change may take effect immediately upon filing. The Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date of the proposed rule change and to waive the five day pre-filing requirement. Acceleration of the operative date and waiving the pre-filing requirement will permit the Exchange to comply with the provisions of Section 11(a) of the Act and implement PCX Plus on October 6, 2003, without undue delay. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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-2003-56 and should be submitted by November 5, 2003.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48597; File No. SR-PCX-2003-57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Exchange's Schedule of Fees and Charges for Exchange Services

October 7, 2003.

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 September 29, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") 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 Exchange. 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 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 rule 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 Exchange 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 is proposing to make changes to its Schedule of Fees and Charges with respect to the following fees effective for the October 2003 trading month: (i) PCX Membership Fees relating to Options Orientation; (ii) PCX Options and Equities Regulatory Fees relating to termination of Registration Fees; (iii) PCX Options Ticket Data Entry Fee; (iv) Broker Dealer Surcharge Fee, and (v) PCX Options Floor, Market Maker and Remote Market Maker Fees.

Orientation and Testing Fees

Orientation and testing fees are comprised of different components including orientation and examination administration, background investigations and fingerprinting. Currently, the Exchange's Schedule of Fees and Charges—General Membership Fees—includes a \$1,000 Options Orientation Fee. In connection with the launch of PCX Plus,³ the Exchange has reconfigured a development and delivery process for the Exchange's Orientation and Testing program. The Exchange plans to execute a transition plan to facilitate an orderly transfer of the responsibilities relating to the orientation and testing from a third-party provider to the PCX and the NASD. Pursuant to the revised

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19-4(f)(6)

¹⁰ For purposes only 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).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (order approving PCX 2002-36).