

efficiency of trading with orders and Quotes with Size in the Consolidated Book. The Commission notes that this proposal does not change the manner in which Floor Brokers and Market Makers effect transactions with options that do not trade on PCX Plus.<sup>9</sup>

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-PCX-2004-47), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50153; File No. SR-PCX-2004-73]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Handling of Orders Pursuant to Intermarket Option Linkage

August 5, 2004.

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 July 21, 2004, 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. On August 3, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>9</sup> Phone conversation between Kelly Riley, Assistant Director, Division of Market Regulation, Commission, and Steve B. Matlin, Senior Attorney, Regulatory Policy, PCX, August 3, 2004.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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 Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 3, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a new Form 19b-4, which replaced and superceded the original filing in its entirety.

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

The Exchange is proposing to amend PCX Rules 6.93 and 6.94. These rules set forth the way orders are handled through Intermarket Option Linkage ("Linkage"). The text of the proposed rule change, as amended, is available at the offices of the Exchange and the Commission's Public Reference Room.

### 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 Exchange 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 amend PCX Rules 6.93 and 6.94 to make administrative changes necessary as a result of the Exchange's change to a demutualized structure.<sup>4</sup> PCX filed the recently approved changes to PCX Rules 6.93 and 6.94 prior to the Commission's approval of a demutualized structure. The Commission approved the proposed changes to PCX Rules 6.93 and 6.94 following the approval of the demutualized structure.<sup>5</sup> The approval of the demutualized PCX Rules eliminated references to PCX Members and replaced such references with Option Trading Permits. As a result of the changes, the Exchange no longer retains any Members, and PCX Rules 6.93 and 6.94 must therefore be modified to comply with the approved demutualized PCX Rules.

<sup>4</sup> See Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (SR-PCX-2004-08) (order approving PCX demutualization).

<sup>5</sup> See Securities Exchange Act Release Nos. 49890 (June 17, 2004), 69 FR 36145 (June 28, 2004) (SR-PCX-2004-33) (order approving a change to handling of Principal Acting as Agent Orders submitted through Linkage) and 49967 (July 2, 2004), 69 FR 41871 (July 12, 2004) (SR-PCX-2004-34) (order approving a change to the handling of Satisfaction Orders submitted through Linkage).

##### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>7</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

The Exchange did not solicit nor receive any written comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and subparagraph (f)(3) of Rule 19b-4<sup>9</sup> thereunder because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such 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.<sup>10</sup>

### IV. 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. Comments may be submitted by any of the following methods:

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

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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(3).

<sup>10</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on August 3, 2004, the date PCX filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX 2004-73 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX 2004-73 and should be submitted on or before September 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50152; File No. SR-PCX-2004-61]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. To Extend Until June 5, 2005, a Pilot Program Under Which It Lists Options on Selected Stocks Trading Below \$20 at One-Point Intervals**

August 5, 2004.

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 August 3, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by 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**

PCX proposes to extend until June 5, 2005, a pilot program under which it lists options on selected stocks trading below \$20 at \$1 strike price intervals ("S1 Strike Pilot Program"). The text of the proposed rule change is available at the Office of the Secretary, 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, 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. 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 purpose of this proposal is to extend the PCX's S1 Strike Pilot Program until June 5, 2003. The current

S1 Strike Pilot Program expires on August 4, 2004. PCX states that its member firms have expressed a continued interest in listing additional strike prices on low priced stocks so that they can provide their customers with greater flexibility in their investment choices. For this reason, PCX proposes to extend the S1 Strike Pilot Program. PCX notes that all of the issues eligible to be included in the S1 Strike Pilot Program, the procedures for adding S1 strike intervals, the procedures for phasing out \$2.50 strike price intervals, the prohibition against listing long-term options (also known as "LEAPS") in equity option classes at S1 strike price intervals, the procedures for adding expiration months and the procedures for deleting S1 strike intervals will all remain the same.<sup>3</sup>

**2. Statutory Basis**

PCX believes that the continuation of the S1 Strike Pilot Program will stimulate customer interest in options overlying lower-priced stocks by creating greater trading opportunities and flexibility. PCX further believes that continuation of the S1 Strike Pilot Program will provide customers with the ability to more closely tailor investment strategies to the precise movement of the underlying security. For these reasons, PCX believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act.<sup>4</sup> Specifically, PCX believes the proposed rule change is consistent with the requirements under section 6(b)(5)<sup>5</sup> that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in

<sup>3</sup> The Commission approved the S1 Strike Pilot Program on June 17, 2003. See Securities Exchange Act Release No. 48045 (June 17, 2003); 68 FR 37549 (June 24, 2003) ("Pilot Program Approval Order"). See also Securities Exchange Act Release No. 49818 (June 4, 2004), 69 FR 33440 (June 15, 2004) (notice of filing and immediate effectiveness of File No. SR-PCX-2004-39) (extending the S1 Strike Pilot Program until August 4, 2004) ("Pilot Extension Notice"). The Pilot Program Approval Order and the Pilot Extension Notice required PCX to provide the Commission with certain information and data covering the entire time the S1 Strike Pilot Program was in effect in the event that PCX proposed to, among other things, extend the S1 Strike Pilot Program. Accordingly, PCX has prepared and submitted a report ("Pilot Program Report") that provides data and written analysis relating to the five options classes PCX selected to participate in the S1 Strike Pilot Program.

<sup>4</sup> 15 U.S.C. 78f(b).

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

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

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

<sup>11</sup> 17 CFR 200.30-3(a)(12).