

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51039; File Nos. SR-NYSE-2004-12; SR-NASD-2003-140]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Relating to the Prohibition of Certain Abuses in the Allocation and Distribution of Shares in Initial Public Offerings

January 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² the New York Stock Exchange, Inc. (“NYSE”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change (SR-NYSE-2004-12), and Amendment No. 1 thereto, and the National Association of Securities Dealers, Inc. (“NASD”) filed a proposed rule change (SR-NASD-2003-140), and Amendments Nos. 1 and 2 thereto, relating to the prohibition of certain abuses in the allocation and distribution of shares in initial public offerings. A complete description of the proposed rule changes and the amendments thereto is found in the notice of filing, which was published in the **Federal Register** on December 28, 2004.³ The comment period expires on January 18, 2005.

To give the public additional time to comment on the proposed rule changes, the Commission has decided to extend the comment period pursuant to Section 19(b)(2) of the Act.⁴ Accordingly the comment period shall be extended until February 15, 2005.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rules are consistent with the Act and whether there are any differences between the NYSE and NASD proposals that present compliance or interpretive issues. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File

Nos. SR-NYSE-2004-12 and SR-NASD-2003-140. These file numbers should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 filings will also be available for inspection and copying at the principal offices of the NYSE and NASD. All submissions should be submitted by February 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51044; File No. SR-PCX-2005-05]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change To Increase Position Limits and Exercise Limits for Options on Standard and Poor’s Depository Receipts

January 14, 2005.

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 January 12, 2005, 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. In addition, the Commission is granting

accelerated approval of the proposed rule change.

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

The Exchange proposes to amend PCX Rule 6.8 to increase position limits and exercise limits for options on the Standard and Poor’s Depository Receipts (“SPY”). The text of the proposed rule change is available on the PCX’s Web site (<http://www.pacificex.com>), at the PCX’s Office of the Secretary, and at 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 had 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 began trading options on SPY on January 10, 2005 on the Exchange’s electronic trading platform, PCX Plus. The Exchange proposes to amend PCX Rule 6.8, Commentary .06 to increase position limits and exercise limits for options on SPY from 75,000 to 300,000 contracts on the same side of the market.

Given the expected institutional demand for options on SPY, the PCX believes the current equity position limit of 75,000 contracts to be too low and a deterrent to the successful trading of the product. Options on SPY are $\frac{1}{10}$ th the size of options on the Standard and Poor’s 500 Index (“SPX”). Thus, a position limit of 75,000 contracts in SPY options is equivalent to a 7,500 contract position limit in SPX options. Traders who trade SPY options to hedge positions in SPX options are likely to find a position limit of 75,000 contracts in SPY options too restrictive, which may adversely affect the Exchange’s ability to provide liquidity in this product.

Comparable products, such as options on the Nasdaq-100 Index Tracking Stock (“QQQ”), are subject to a 300,000

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50896 (December 20, 2004), 69 FR 77804 (December 28, 2004).

⁴ 15 U.S.C. 78s(b)(2).

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

contract limit.³ The Exchange proposes that options on SPYs similarly be subject to position limits and exercise limits of 300,000 contracts.⁴ The Exchange believes that increasing position limits and exercise limits for SPY options would lead to a more liquid and competitive market environment for SPY options that would benefit customers interested in this product.

Consistent with the reporting requirement for QQQ options, the Exchange would require that each OTP Holder and OTP Firm that maintains a position on the same side of the market in excess of 10,000 contracts in the SPY option class, for its own account or for the account of a customer report certain information.⁵ This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts would remain at this level for SPY options.⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ 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

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

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

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. Please include File Number SR-PCX-2005-05 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-2005-05. 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 PCX. 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 publicly available. All submissions should refer to File Number SR-PCX-2005-05 and should be submitted on or before February 14, 2005.

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

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 exchange,⁹ and, in particular, the requirements of Section 6(b)(5) of the Act.¹⁰ Specifically, the Commission finds that the proposed rule change should ensure that the Exchange's position limits and exercise limits on SPY options provide its OTP Holders and OTP Firms with sufficient flexibility to participate in the market for such options in a manner that should provide greater depth and liquidity for all market participants.

The Commission finds good cause for approving this proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. Specifically, the Commission believes that granting accelerated approval to the proposed rule change should permit greater depth and liquidity in the SPY options market that should benefit all market participants, including retail investors. Because the higher position limits and exercise limits mirror those that the Commission has previously approved for like products, the Commission believes it is consistent with Sections 6(b)(5)¹¹ and 19(b)(2)¹² of the Act to approve the PCX's proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-PCX-2005-05) is hereby approved on an accelerated basis.

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

Margaret H. McFarland,
Deputy Secretary.

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⁹In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(2).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

³ See PCX Rule 6.8, Commentary .06(f).

⁴ Pursuant to PCX Rule 6.9, Commentary .01, the exercise limit for SPY options under PCX Rule 6.9 would be equivalent to the position limit established in PCX Rule 6.8, Commentary .06(f).

⁵ See PCX Rule 6.6.

⁶ See PCX Rule 6.6.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).