

OCC's systems would treat the transaction as a failed CMTA and would cause the transaction to be cleared in the executing clearing member's designated or default account in accordance with OCC Rule 403.

Under the terms of a model agreement developed by the working group to reflect the rights and obligations of the carrying and executing clearing members with respect to their customer CMTA arrangement, the firms would identify each CMTA covered customer. Separately, the clearing members would assign identifiers to their CMTA customers and introducing brokers. One clearing member then would register the assigned identifiers with OCC. OCC's systems would require the other clearing member to approve the identifiers before they are submitted to OCC for registration. Identifiers would be effectively registered when they are accepted by OCC's systems, subject to OCC's right to reject an already registered identifier.⁶ OCC would retain the right to specify criteria applicable to the characters used to form identifiers for systemic reasons.

The prime broker clearing members involved in developing these requirements believe that including identification information about the CMTA customer and introducing broker to a transaction would make CMTA processing more transparent. Since carrying clearing members do not have the ability to approve or reject a transaction before it is entered into the exchanges' systems for reporting to OCC, they believe having OCC verify customer and introducing broker information will assist in limiting the chances that a transaction erroneously will be transferred into one of their clearing accounts. They also believe having such information available on the trade record will improve the effectiveness of their back office efforts to confirm that transactions cleared in their accounts conform to the information supplied by their customer or its introducing broker, and thereby, will facilitate decision making on whether the position resulting from the transaction is eligible for return under their CMTA agreement and Rule 403.

OCC believes that the proposed rule change is consistent with Section 17A of the Act⁷ because it fosters the prompt and accurate clearance and settlement of securities transactions, the safeguarding of funds and securities, and the

protection of investors and the persons facilitating transactions by and acting on behalf of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

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

OCC did not solicit or receive written comments with respect to the proposed rule change.

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

Within thirty-five 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 ninety 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 self-regulatory organization 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. 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-OCC-2004-19 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-OCC-2004-19. 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 OCC's principal office and on OCC's Web site at http://www.optionsclearing.com/publications/rules/proposed_changes/proposed_changes.jsp. 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-OCC-2004-19 and should be submitted on or before February 28, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51113; File No. SR-PCX-2005-08]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Thereto Relating to a Revision and Extension of a Limitation on Trade Through Liability at the End of the Options Trading Day Pilot Program

January 31, 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 26, 2005, the Pacific Exchange ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II

⁶ Carrying and executing clearing members would be responsible to update their respective registrations of CMTA Customer Identifiers and IB Identifiers including registering any changes or deletions with respect thereto.

⁷ 15 U.S.C. 78q-1.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

below, which Items have been prepared by the PCX. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 extend a pilot program for a limitation on trade-through liability for certain orders submitted pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the "Linkage Plan") during the period five minutes before the close of trading of the underlying security until the close of trading in the options class ("Pilot Program"). The Pilot Program would be extended to January 31, 2006 and would increase the limit on trade-through liability at the end of the day from 25 contracts to 50 contracts.

The text of the proposed rule change is available on the PCX's Web site at <http://www.pacificex.com>, at the Exchange'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, 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 purpose of this rule filing is to extend the pilot provision limiting trade-through liability at the end of the day. Pursuant to the Pilot Program as

currently in effect, an OTP Holder's⁶ or OTP Firm's⁷ trade-through liability is limited to 25 contracts per Satisfaction Order⁸ for the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class.

The proposed rule change would extend the Pilot Program for an additional year, until January 31, 2006. In addition, the proposal will increase the limit on trade-through liability at the end of the day from 25 contracts to 50 contracts. This increase in the limit on liability would be effective on February 1, 2005, when the current pilot expires. The period during which this limit will apply will remain the same, from five minutes prior to the close of trading in the underlying security until the close of trading in the options class.

The participants in the Linkage Plan ("Participants") are currently considering Linkage Plan amendments that, if proposed and approved, could obviate the need for this limitation of liability. Specifically, the amendments would increase the ability to receive automatic execution of P/A Orders⁹ and would provide tools to avoid trade-through liability generally, including at the end of the day. The Participants, including the Exchange, anticipate that these amendments could be in effect within a year. At that time, the Participants would either allow the pilot to lapse, or, if they believed that a continuation of the limitation was appropriate, would discuss the matter further with Commission staff.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and

perfect the mechanism of a free and open market and a national market system.

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 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 comments on the proposed rule change.

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

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change immediately operative.

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.¹⁵ By waiving the pre-filing requirement and accelerating the operative date, the Pilot Program can continue without interruption. The Commission believes that allowing the pilot to continue will

¹² 15 U.S.C. 78s(b)(3)(A)

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ *Id.*

¹⁵ 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).

⁶ See PCX Rule 1(q).

⁷ See PCX Rule 1(r).

⁸ A "Satisfaction Order" is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. See Section 2(16)(c) of the Linkage Plan.

⁹ A Principal Acting as Agent ("P/A") Order is an order for the principal account of a Market Maker that is authorized to represent Customer orders, reflecting the terms of a related unexecuted Customer order for which the Market Maker is acting as agent. See Section 2(16)(a) of the Linkage Plan.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The PCX asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

allow Participants to either gather sufficient information to justify the need for the pilot program or determine that the exemption from trade-through liability is no longer necessary. Increasing the maximum number of contracts to be satisfied with respect to Satisfaction Orders in the last seven minutes of trading in options to 50 contracts will enhance customer order protection.

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.

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. 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-2005-08 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-2005-08. 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 Room. Copies of the filing also will be

available for inspection and copying at the principal offices 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 available publicly. All submissions should refer to File Number SR-PCX-2005-08 and should be submitted on or before February 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51094; File No. SR-PCX-2004-43]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto Relating to a Proposed Listing Fee Schedule for Structured Products

January 28, 2005.

I. Introduction

On May 11, 2004, the Pacific Exchange, Inc. ("PCX") submitted to 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 to amend its fee schedule to provide separate listing fees for structured products. PCX filed Amendment No. 1 to the proposed rule change on August 9, 2004.³ PCX filed Amendment No. 2 to the proposed rule change on August 23, 2004.⁴

¹⁶ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Tania Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 5, 2004 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety. In Amendment No. 1, PCX added a definition of "Structured Products" to the proposal and made other clarifying changes.

⁴ See letter from Tania Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 20, 2004 ("Amendment No. 2"). In Amendment No. 2, PCX made a minor typographical correction to its proposed rule text.

The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on September 24, 2004.⁵ The Commission received no comment letters on the proposed rule change and Amendment Nos. 1 and 2. PCX filed Amendment No. 3 to the proposed rule change on December 9, 2004.⁶ This order approves the proposed rule change and Amendment Nos. 1 and 2, and issues notice of filing of, and approves on an accelerated basis, Amendment No. 3.

II. Description of the Proposed Rule Change

The PCX, through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), has proposed to adopt new listing fees specifically for Structured Products listed and traded on the Archipelago Exchange. The proposed listing fees include a non-refundable listing application fee, initial listing fees, and annual maintenance fees for Structured Products. The proposal adds a definition of "Structured Products"⁷ to the PCXE rules to clarify which products would be assessed the proposed listing fees.

In Amendment No. 3 to the proposed rule change, PCX added definitions of "Exchange-Traded Fund"⁸ and "Closed-End Fund"⁹ to the PCXE rules and a definition of "Funds"¹⁰ to the PCXE fee schedule. Amendment No. 3 also modified the proposed definition of "Structured Products." Amendment No.

⁵ See Securities Exchange Act Release No. 50448 (October 1, 2004), 69 FR 58989.

⁶ In Amendment No. 3, PCX added definitions for exchange-traded funds and closed-end funds and added a statement to the fee schedule to clarify that the term "Funds" refers to exchange-traded funds and closed-end funds in order to properly distinguish Funds from Structured Products.

⁷ As modified by Amendment No. 3, Structured Products are defined as "products that are derived from and/or based on a single security or securities, a basket of stocks, an index, a commodity, debt issuance and/or a foreign currency, among other things" and would include "index and equity linked notes, term notes and units generally consisting of a contract to purchase equity and/or debt securities at a specified time."

⁸ Amendment No. 3 defines Exchange-Traded Funds as "unit investment trusts, portfolio depository receipts and trust issued receipts designed to track the performance of the broad stock or bond market, stock industry sector, and U.S. Treasury and corporate bonds, among other things."

⁹ Amendment No. 3 defines Closed-End Funds ("CEFs") as "a type of investment company registered under the Investment Company Act of 1940 that offers a fixed number of shares" that "are professionally managed in accordance with the CEF's investment objectives and policies, and may be invested in stocks, fixed income securities or a combination of both."

¹⁰ Amendment No. 3 provides that "Funds", as that term is used in the Fee Schedule, include Exchange-Traded Funds and Closed-End Funds.