

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52026; File No. SR-NYSE-2005-26]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto To Extend the Closing Time of Crossing Session II, and To Amend Its Crossing Sessions III and IV To Eliminate the Share Size Restriction and the Process by Which an Order Is Executed if There Is No Execution Prior to 4 p.m.

July 13, 2005.

On April 8, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend rules governing its Off-Hours Trading Facility ("OHTF"), Crossing Sessions II, III, and IV, in particular. On May 19, 2005, NYSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change as amended, was published for comment in the **Federal Register** on June 8, 2005.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The NYSE proposes to amend rules governing its OHTF. The proposed rule change would (1) extend the closing time of Crossing Session II from 6:15 p.m. to 6:30 p.m., and (2) amend rules governing Crossing Sessions III and IV to (i) eliminate the 10,000 share size restriction for both types of orders in Crossing Sessions III and IV, and (ii) provide that if there is no execution prior to 4 p.m., the entire order would be eligible for execution in the crossing session, rather than just the portion of the customer's order that could not be executed prior to 4 p.m.

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<sup>5</sup> and, in particular, the requirements of section 6 of the Act<sup>6</sup>

and the rules and regulations thereunder. Specifically, the Commission finds the proposal to be consistent with section 6(b)(5) of the Act,<sup>7</sup> in that it is 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.

The Commission believes that the changes should enhance the usefulness and practicality of Crossing Session II by making it available to member organizations for a greater time period and making its closing time consistent with the closing time of Crossing Sessions III and IV. Additionally, the Commission believes that the elimination of the size restriction for orders in Crossing Sessions III and IV should increase the availability of these sessions to member organizations.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NYSE-2005-26), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52024; File No. SR-PCX-2005-82]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Fees and Charges

July 13, 2005.

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 June 28, 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 PCX has designated this proposal as one changing a fee imposed by the PCX

<sup>1</sup> 15 U.S.C. 78f(b)(5).

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

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

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 proposes to amend its Schedule of Fees and Charges For Exchange Services ("Schedule") in order to modify the Exchange's marketing fee program. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

Rules of the Pacific Exchange, Inc.

\* \* \* \* \*

#### PCX OPTIONS: TRADE-RELATED CHARGES

**MARKETING CHARGE**—For Nasdaq-100 Tracking Stock Options (QQQQ) \$0.95 per contract side on all Market Maker transactions (excluding Market Maker to Market Maker transactions) and for Standard and Poor's Depository Receipts (SPY) \$1.00 per contract side on all Market Maker transactions (excluding Market Maker to Market Maker transactions). For all other PCX Equity Options: \$0.[60]45 per contract side on transactions of Lead Market Makers and Market Makers against *all public* customer orders [from payment accepting firms in the Exchange program].

[Cap on Marketing Charge—\$200 per trade except for trades of Standard and Poor's Depository Receipts SPY and QQQQ. There is no cap on marketing charges for trades of SPY and QQQQ.]

\* \* \* \* \*

### 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.

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

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

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

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

<sup>3</sup> Amendment No. 1 made clarifying changes to the Purpose section of the filing.

<sup>4</sup> See Securities Exchange Act Release No. 51747 (May 26, 2005), 70 FR 33571 (June 8, 2005) (SR-NYSE-2005-26).

<sup>5</sup> In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Schedule in order to modify the Exchange's marketing fee program. Currently, except for transactions involving options on the NASDAQ-100 Tracking Stock ("QQQQ") and Standard and Poor's Depository Receipts ("SPY"), the Exchange collects \$0.60 per contract for all transactions that are made between a Lead Market Maker ("LMM") or a Market Maker against customer orders from payment accepting firms in the Exchange program.

The Exchange proposes to modify its current program by reducing the marketing fee from \$0.60 per contract for trades made with customer orders from payment accepting firms in the Exchange program to \$0.45 per contract for all public customer orders. The proposed change does not affect the Exchange's marketing fee program for trades involving options on the QQQQ and SPY. The marketing fee for options on the QQQQ and SPY is not being amended. Currently, the Exchange also caps marketing charges at \$200 for all trades not involving options on the QQQQ or SPY. In addition to the rate change, the Exchange is proposing to eliminate the \$200 per trade cap.

The Exchange states that the purpose of the change in the marketing fee is to help the Exchange's marketing fee program remain competitive with the programs currently in place at other exchanges. Specifically, a number of other exchanges assess marketing charges across a broader spectrum of customer orders instead of limiting the charges to transactions where the PCX Market Maker trades against a payment receiving firm. While the proposed rate change will provide LMM's with competitive amounts of capital to attract order flow, it is also believed that a universally applied rate will help market makers better understand the total cost of the trade.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees, and charges is consistent with Section 6(b) of the Act<sup>5</sup> in general, and Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its OTP Holders

and other persons using its facilities for trading option contracts.

*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*

No written comments were either solicited or received.

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

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and Rule 19b-4(f)(2)<sup>8</sup> thereunder. Accordingly, the proposal will take effect upon filing with the Commission. 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](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2005-82 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2005-82. 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 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 available publicly. All submissions should refer to File Number SR-PCX-2005-82 and should be submitted on or before August 10, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E5-3861 Filed 7-19-05; 8:45 am]

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**SMALL BUSINESS ADMINISTRATION**

[License No. 09/79-0432]

**Telesoft Partners II SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest**

Notice is hereby given that Telesoft Partners II SBIC, L.P., 1450 Fashion Island Blvd., Suite 610, San Mateo, CA 94404, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Telesoft Partners II SBIC, L.P. proposes to provide equity/debt security financing to BayPackets, Inc. The financing is

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).