

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. 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-NYSE-2005-44 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-NYSE-2005-44. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2005-44 and should be submitted on or before August 17, 2005.

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

After careful consideration, 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>11</sup> In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>12</sup> which requires among other things, that the rules of the Exchange are 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 proposed change would continue to provide for widespread availability of index information in connection with listing or trading ICUs under the generic standards in Section 703.16 of the Company Manual and will facilitate the utilization of the generic standards, while maintaining comparable or increased public availability of index information.<sup>13</sup>

The NYSE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that it has recently approved similar proposals regarding the dissemination of the underlying index value for ICU's traded on Nasdaq and the American Stock Exchange LLC ("Amex").<sup>14</sup> The Commission believes that granting accelerated approval of the proposal will allow the NYSE to immediately implement these listing standards for dissemination of the underlying index value that already are in place on Nasdaq and the Amex, along with dissemination of the IIV through one or more major market vendors. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,<sup>15</sup> for approving the proposed

<sup>11</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See Securities Exchange Act Release Nos. 51748 (May 26, 2005), 70 FR 32684 (June 3, 2005) (SR-NASD-2005-024); and 51868 (June 17, 2005), 70 FR 36672 (June 24, 2005) (SR-Amex-2005-44).

<sup>14</sup> *Id.*

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

rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-NYSE-2005-44) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Jill M. Peterson,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52070; File No. SR-PCX-2005-61]

### Self-Regulatory Organizations; The Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, Establishing a De Minimis Exception to the 80/20 Test

July 20, 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 April 26, 2005, the Pacific Exchange, Inc. ("Exchange" or "PCX") 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. On June 29, 2005, the Exchange submitted 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.

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

The Exchange proposes to modify the "80/20 Test" in determining limitations on Principal Order access under the rules imposed by the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan")<sup>4</sup> and related rules.

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</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> Amendment No.1 added clarifying language to the proposed rule text.

<sup>4</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options

The text of the proposed rule change, as amended, is available on the PCX's Web site at <http://www.pacificex.com>, 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 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 proposed rule change, as amended, is to implement proposed Joint Amendment No. 17 to the Linkage Plan. Joint Amendment No. 17, together with this proposed rule change, will modify the so called "80/20 Test" set forth in Section 8(b)(iii) of the Linkage Plan and PCX Rule 6.96. PCX Rule 6.96 states that Market Makers should send Principal Orders through Linkage on a limited basis and not as a primary aspect of their business.<sup>5</sup> The 80/20 Test implements this general principle by prohibiting a Market Maker from sending Principal Orders in an eligible option class if, in the last calendar quarter, the Market Maker's Principal Order contract volume is disproportionate to the Market Maker's contract volume executed against customer orders in its own market.

The Exchange believes that applying the 80/20 Test has resulted in anomalies for Market Makers with limited volume in an eligible option class. Specifically,

market linkage ("Linkage") proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Inc. and the International Securities Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, the Philadelphia Stock Exchange, Inc., the PCX, and the Boston Stock Exchange, Inc. joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>5</sup> The Exchange defines a Principal Order as an order for a principal account of an eligible Market Maker that does not relate to a customer order the Market Maker is holding. See PCX Rule 6.92(a)(12)(ii).

if a Market Maker has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the Market Maker failing to meet the Test. This would bar the Market Maker from using the Linkage to send Principal Orders in that option class for the following calendar quarter. It was not the intent of the Exchange to bar Market Makers with limited volume from sending Principal Order through the Linkage in these circumstances since such trading was not "a primary aspect of their business." Thus, the proposed rule would create a *de minimis* exemption from the 80/20 Test for Market Makers that have total contract volume of less than 1000 contracts in an option class for a calendar quarter.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change 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 because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 PCX does not believe that the proposed rule change will impose any burden on competition.

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

No written comments were solicited or received with respect to 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form at <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 No. SR-PCX-2005-61 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 No. SR-PCX-2005-61. 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, 100 F Street, NE., 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 available publicly. All submissions should refer to File Number SR-PCX-2005-61 and should be submitted on or before August 17, 2005.

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

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

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52090; File No. SR-PCX-2005-68]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Modify Its Rate Schedule Retroactively to January 1, 2002 To Cap the Fees on Multiple Options Issues Transfers

July 20, 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 May 13, 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. On July 1, 2005, 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.

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

The Exchange proposes to modify its rate schedule retroactive to January 1, 2002 to allow the Exchange to cap the fee it charges a Lead Market Maker ("LMM") when multiple options issues are transferred. The text of the proposed rule change, as amended, is available on the Exchange's Web site (<http://www.pacificex.com>), at the Exchange's principal office, 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 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 PCX proposes to add a defined rate schedule applicable to the cap on issue transfer fees. The PCX charges a Lead Market Maker (LMM) that has been allocated an options issue a \$1000 fee in the event that the LMM transfers the issue to another LMM, in accordance with PCX Transfer of Issues Guidelines.<sup>4</sup> The purpose of this fee, which was filed as part of PCX-2001-51,<sup>5</sup> is to help offset the administrative and technological costs related to transferring an options issue. While it is still accurate to charge \$1000 for the transfer of one issue, when multiple issues are transferred as part of a single transaction the overall costs associated with the transfer may be reduced. To assess an LMM the full \$1000 on every transferred issue, with no limit to the total charges, is not in keeping with the original intent of the transfer fee. By establishing a cap on the fees the Exchange charges an LMM, the Exchange is attempting to more accurately assess the LMM the true cost associated with a transfer, which was the purpose of the fee when first implemented. The PCX proposes to continue charging \$1000 per issue transferred, but cap the fee at \$15,000 for the first one hundred issues transferred, and \$5000 for every one hundred (or any part of) additional issues transferred. Using this rate schedule the PCX would cap the transfer fee at \$15,000 for the first 100 issues, \$20,000 for up to 200 issues transferred and \$25,000 for up to 300 issues transferred, and so forth using the same formula. To qualify for the rate cap all transfers must be deemed to be part of a single transaction and meet the guidelines of the PCX Transfer of Issues Guidelines. The new fee cap will allow the PCX to more accurately assess an LMM the technological and administrative costs associated with the transfer of allocated issues. The

Exchange proposes to make this fee effective retroactive to January 1, 2002, the date that PCX-2001-51 was effective. By making this filing retroactive to coincide with the date the transfer fee was originally implemented, the Exchange will have the ability to make any adjustments it deems necessary to allow previous charges to properly reflect the true intent of PCX-2001-51. The PCX will review all past transfers to determine if any adjustments are warranted pursuant to the proposed rate schedule contained in this filing.

##### 2. Statutory Basis

The proposal is consistent with section 6(b) of the Act,<sup>6</sup> in general, and section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of dues, fees, and other charges among its members.

#### 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. 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 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:

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</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> Amendment No. 1 replaced and superseded the original proposal.

<sup>4</sup> PCX Transfer of Issues Guidelines is explained in PCX Regulatory Information Bulletin RBO-03-09 (Aug. 11, 2003).

<sup>5</sup> See Securities Exchange Act Release No. 45351, (January 29, 2002), 67 FR 5631 (February 6, 2002).