

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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 office of the Exchange. All submissions should refer to File No. SR-NYSE-2002-06 and should be submitted by March 5, 2002.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-3300 Filed 2-11-02; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45392; File No. SR-PCX-2001-50]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Rules on Collective Actions of Market Makers

February 5, 2002.

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 December 13, 2001, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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

The PCX is proposing to adopt rules pertaining to collective actions of options market makers that may be made in determining spreads or prices in particular option series. The text of the proposed rule change is set forth below. Additions are in italics; deletions are in brackets.

##### ¶4935 Obligations of Market Makers

Rule 6.37(a)-(c)—No change.

(d)—[Reserved]<sup>3</sup>

##### (e) *Prohibited Practices and Procedures.*

(1) *Any practice or procedure whereby Market Makers trading any particular option issue determine by agreement the spreads or option prices at which they will trade that issue is prohibited.*

(2) [Reserved]

(f) *Notwithstanding the prohibitions set forth in Subsection (e), the LMM and members of the trading crowd are permitted to act collectively as set forth below:*

(1) *The LMM may receive input from the members of the trading crowd on any one or more of the following variables of the formula the LMM uses to generate automatically updated market quotations in each option issue: (A) Options pricing calculation model; (B) volatility; (C) interest rates; and (D) dividends (both declared and anticipated). However, members of the trading crowd are not required to provide input to the LMM on any of these variables. Notwithstanding any input that the members of the trading crowd may have provided with regard to these variables, it is within the LMM's sole discretion to make the final independent decision regarding the variables to be used in operating the automated quotation system. LMMs using Exchange-approved proprietary automated quotation updating systems are not required to disclose proprietary*

*information concerning the variables used by those systems; provided, however, that LMMs may disclose the variables themselves pursuant to Rule 6.82(c)(8).*

(2) *The obligation of Market Makers to make competitive markets does not preclude the LMM and members of the trading crowd from making a collective response to a request for a market, provided the member representing the order requests such a response in order to fill a large order. For purposes of this rule, a large order is an order for a number of contracts that is greater than the eligible order size for automatic execution pursuant to Rule 6.87.*

(3) *In conjunction with their obligations as a responsible broker or dealer pursuant to Rule 6.86 and SEC Rule 11Ac1-1, the LMM and Market Makers in the trading crowd may collectively agree to the best bid, best offer and aggregate quotation size required to be communicated to the Exchange pursuant to Rule 6.86(c).*

##### Lead Market Makers

Rule 6.82(a)-(b)—No change.

##### (c) Obligations of Lead Market Makers:

Each LMM must meet the following obligations:

(1)-(7)—No change

(8) *LMMs are responsible for establishing the variables in the formula used to generate automatically updated quotations in each option issue or series. The LMM may disclose to the members of the trading crowd the following variables of the formula used to generate automatically updated market quotations in each option issue: (A) Options pricing calculation model; (B) volatility; (C) interest rate; and (D) dividends (both declared and anticipated).*

[(8)-(13)]- (9)-(14)—No change.

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

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

<sup>3</sup> Proposed Rule 6.37(d) is pending SEC approval. See File No. SR-PCX-99-13.

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

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

1. Purpose

The Exchange is submitting the proposed rule change pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order,<sup>4</sup> which requires in part that certain options exchanges, including the PCX, adopt new, or amend existing, rules to make express any practice or procedure whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class. The Exchange is proposing to amend PCX Rule 6.37 ("Obligation of Market Makers") by adding a new subsection (e) to be entitled, "Prohibited Practices and Procedures." Proposed subsection (e)(1) would state that any practice or procedure whereby market makers trading any particular option issue determine by agreement the spreads or option prices at which they will trade that issue is prohibited.

The Exchange is also proposing to adopt new PCX Rule 6.37(f), which would provide that notwithstanding the prohibitions set forth in Subsection (e), the Lead Market Maker ("LMM") and members of the trading crowd are permitted to act collectively as set forth in subsection (1) through (3) of proposed PCX Rule 6.37(f).

Subsection (1) to proposed PCX Rule 6.37(f) would permit the LMM to receive input from the members of the trading crowd on any one or more of the following variables of the formula the LMM uses to generate automatically updated market quotations in each option issue: (A) Options pricing calculation model; (B) volatility; (C) interest rates; and (D) dividends (both declared and anticipated). However, members of the trading crowd would not be required to provide input to the LMM on any of these variables. In addition, it would be within the LMM's sole discretion to make the final independent decision regarding the variables to be used in operating the automated quotation system. Finally, subsection (1) would further state that LMMs using Exchange-approved proprietary automated quotation updating systems are not required to disclose proprietary information concerning the variables used by those

systems; provided, however, that LMMs would be permitted to disclose the variables themselves pursuant to proposed PCX Rule 6.82(c)(8). The Exchange believes such input into autoquote variables helps to assure the quality of the Exchange's markets. An LMM may have a variable set erroneously or may have failed to update a variable in response to new information. The Exchange believes that the proposed rule change would allow such errors to be rectified promptly.

Subsection (2) of proposed PCX Rule 6.37(f) would state that the obligation of market makers to make competitive markets would not preclude the LMM and members of the trading crowd from making a collective response to a request for a market, provided the member representing the order requests such a response in order to fill a large order. A large order would be defined as an order for a number of contracts that is greater than the eligible order size for automatic execution pursuant to PCX Rule 6.87.

Subsection (3) of proposed PCX Rule 6.37(f) would state that in conjunction with their obligations as a responsible broker or dealer pursuant to PCX Rule 6.86 and SEC Rule 11Ac1-1,<sup>5</sup> the LMM and market makers in the trading crowd may collectively agree to the best bid, best offer and aggregate quotation size required to be communicated to the Exchange pursuant to PCX Rule 6.86(c).

The Exchange is also proposing a similar change to PCX Rule 6.82 ("Obligations of Lead Market Makers") by adding new subsection (c)(8), which would provide that LMMs are responsible for establishing the variables in the formula used to generate automatically updated quotations in each option issue or series. It would also permit the LMM to disclose to the members of the trading crowd the following variables of the formula used to generate automatically updated market quotations in each option issue: (A) Options pricing calculation model; (B) volatility; (C) interest rate; and (D) dividends (both declared and anticipated).

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)<sup>7</sup> in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market

system, and 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*

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 PCX 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 office of the PCX. All submissions should refer to File No. SR-PCX-2001-50 and should be submitted by March 5, 2002.

<sup>4</sup> See Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

<sup>5</sup> 17 CFR 240.11Ac1-1.

<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>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 02-3296 Filed 2-11-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45395; File No. SR-PCX-2001-33]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1, To Adopt Procedures for the Transfer of Options Positions

February 5, 2002.

On August 10, 2001, the Pacific Exchange, Inc. ("PCX") 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 adopt procedures for the transfer of options positions. On December 11, 2001, the Exchange amended the proposal to: (1) Clarify the intent of the rule that after the proper request has been completed, a transfer will be automatically permitted when the transfer satisfies one of the specified categories set forth in proposed Rule 6.78(d)(1); (2) revise Item 8 to state that the proposed rule change is based, in part, on Chicago Board Options Exchange Rule 6.49A; and (3) make technical changes to the rule text.<sup>3</sup>

The proposed rule change, as amended, was published for comment in the **Federal Register** on December 31, 2001.<sup>4</sup> The Commission received no comments on the proposal.

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. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>7</sup> because it establishes which position transfers may occur off the floor and which position transfers must be offered to the floor, and the procedures for effecting such transfers. The Commission believes differentiating between on floor and off floor position transfers and clearly delineating the procedures for effecting such transfers, will aid in the orderly transfer of option positions which should help to perfect the mechanism of a free and open market and a national market system, and further the public interest.<sup>8</sup>

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-PCX-2001-33), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 02-3304 Filed 2-11-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45396; File No. SR-PCX-2002-05]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Hearing Fees for Issuer Requests for Review of Delisting Decisions

February 5, 2002.

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 January 18, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE" or "Corporation") 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 PCXE. The Commission is publishing this notice to

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

<sup>2</sup> The Commission also notes that the proposed rule change is based, in part, on Chicago Board Options Exchange Rule 6.49A, which the Commission approved on December 28, 1995. See Securities Exchange Act Release No. 36647, 61 FR 566 (January 8, 1996).

<sup>3</sup> 15 U.S.C. 78s(b)(2).

<sup>4</sup> 17 CFR 200.30-3(a)(12).

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

<sup>6</sup> 17 CFR 240.19b-4.

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 Exchange, through its wholly owned subsidiary PCXE, proposes to amend PCXE Rule 5.5(m) to require issuers to pay an appeal hearing fee of \$2,500 in connection with their appeal of the Corporation's decision to delist a security. The text of the proposed rule change is available at the Office of the Secretary, the PCX, and 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, 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

PCXE Rule 5.5(m) provides the procedures with which the Corporation complies in determining to delist a security for other than routine reasons (such as redemptions, maturities, etc.). In order to determine whether the security meets the maintenance criteria, the Corporation relies upon the objective data furnished by the issuer.<sup>3</sup> If it appears that the security no longer meets the maintenance requirements, the Corporation notifies the issuer in writing describing the basis on which the Corporation is considering delisting the security and proposes to meet with the issuer to hear reasons why the issuer believes the security should not be delisted.<sup>4</sup> If the issuer does not provide a sufficient basis demonstrating that it meets the current listing criteria, the Corporation will notify the issuer that it proposes to delist the security and that the issuer has the right to appeal the decision.<sup>5</sup> An issuer who wishes to appeal may, within five days of

<sup>3</sup> See PCXE 5.5(a), Maintenance Requirements and Delisting Procedures.

<sup>4</sup> See PCXE 5.5(m)(1), Delisting Procedures.

<sup>5</sup> See PCXE 5.5(m)(2).

<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> See letter dated December 10, 2001 from Cindy Sink, Senior Attorney, Regulatory Policy, PCX, to Joseph Morra, Special Counsel, Division of Market Regulation, Commission and attachments ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 45188 (December 21, 2001), 66 FR 67606.

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

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