

particular with the requirements of section 17A(b)(3)(F) of the Act and the rules and regulations thereunder. *It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2002-10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48522; File No. SR-PCX-2003-31]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Making Housekeeping Changes to Its Options Trading Rules

September 23, 2003.

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 July 8, 2003, 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 PCX. On September 10, 2003, the PCX 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 PCX proposes to amend its rules to clarify existing provisions, eliminate superfluous provisions, re-number the rules where appropriate in order to coincide with PCX Plus, and otherwise bring the rules up-to-date.

The text of the proposed rule change is available at the Office of the Secretary, PCX, and at 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 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.

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

###### 1. Purpose

On May 7, 1999, the Exchange filed with the Commission a proposed rule change, SR-PCX-99-13,<sup>4</sup> to modify its rules pertaining to Market Makers and Lead Market Makers ("LMMs"). The PCX represents that the purpose of that rule change was to clarify existing provisions, eliminate superfluous provisions, and otherwise bring its rules up-to-date. The Exchange withdrew this filing on April 9, 2002, with the intention to re-file after its PCX Plus proposal was approved.<sup>5</sup> The Exchange proposes to re-file this proposed rule change with additional housekeeping changes as a result of the Commission's approval of PCX Plus.

The Exchange proposes to make the following changes to the text of PCX Rule 6 ("Options Trading—Rules Principally Applicable to Trading of Options Contracts") with regard to Market Makers and LMMs:

First, the Exchange proposes to amend PCX Rule 6.28(b)(5) with respect to Fast Markets and Unusual Market Conditions. Under the proposed rule change, the reference to PCX Rule 6.37(f) will be corrected to reflect the correct rule number, which is PCX Rule 6.37, Commentary .05. This is a technical error that the Exchange wishes to correct at this time.

Second, the Exchange proposes to amend PCX Rule 6.32(e) to clarify that the section is only applicable with regard to Market Maker orders entered from off the floor that are not entitled to special margin treatment pursuant to the previous subsections. The Exchange

believes that the proposed rule amendment will clarify any possible confusion in the rule.

Third, the PCX proposes changes to PCX Rules 6.35 and 6.38(a) regarding the procedures for selection of Market Maker primary appointment zones, so that in all cases, Market Makers would be required to select a primary zone prior to the expiration of a 60-day grace period. Currently, PCX Rule 6.35 requires that the PCX's Options Allocation Committee assign Market Makers with a primary appointment zone. However, it does not expressly require that Market Makers apply for such appointments. It only states that a Market Maker's refusal to accept a primary appointment zone may be deemed a sufficient cause for termination or suspension of a Market Maker's registration. This change should clarify any confusion as to a Market Maker's requirement for choosing a primary appointment zone. The Exchange also proposes to make PCX Rule 6.38 consistent with the changes to PCX Rule 6.35 by replacing the phrase "shall be given" a primary appointment zone with the phrase "must obtain" a primary appointment zone.

Fourth, the Exchange proposes to move the current text in Commentary .03 to PCX Rule 6.35(f), leaving Commentary .03 as reserved. The PCX believes it is more appropriate to have this text in the rule as opposed to the commentary.

Fifth, PCX proposes to add a provision on FLEX Option to PCX Rule 6.36 in order to conform its Letters of Guarantee rule to its Letters of Authorization rule, as stated in PCX Rule 6.45. The Exchange believes the change would clarify any confusion with respect to letters of guarantee and letters of authorization.

Sixth, the Exchange proposes to eliminate OFPA B-4, Subject: Market Maker Trading on the PSE Equity Floors, as the reference to equity floors is no longer applicable to PCX.

Seventh, the PCX proposes to change PCX Rule 6.82 by replacing references to "alternate LMMs" and "substitute LMMs" with references to "interim LMMs" and "back-up LMMs," respectively. The Exchange believes the new references better define the intended role of the LMMs in these circumstances. The Exchange also proposes to amend PCX Rule 6.82(c)(3) in order to clarify the LMM's obligation to generate and update its quotations.

Eighth, the Exchange proposes to clarify that, under PCX Rule 6.84(g), a Market Maker trading for a joint account must have a primary appointment, but

<sup>20</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 replaces the PCX's original Rule 19b-4 filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 42035 (October 19, 1999), 64 FR 57681 (October 26, 1999) (notice of filing of File No. SR-PCX-99-13).

<sup>5</sup> See Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (order approving PCX Plus, a new electronic platform for options trading).

the joint account itself is not required to have a primary appointment.<sup>6</sup>

Ninth, the PCX proposes to amend PCX Rule 6.92 on Intermarket Linkage by adding a reference to "PCX Plus" in Rule 6.92(a)(7)(ii). This change will clarify that the Intermarket Linkage rules apply to Members or Member Firms who are logged on to PCX Plus in an Eligible Option Class.

Tenth, the Exchange proposes to add an example of an Associated Person into PCX Rule 6.52, Commentary .03 for clarity.

Lastly, the Exchange proposes to make various housekeeping, grammatical, and conforming numbering changes as a result of PCX Plus, to the current rules on Market Makers and LMMs.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest. The Exchange believes that the proposed rule change, as amended, is also consistent with Section 6(b)(6) of the Act,<sup>9</sup> which requires that members and persons associated with members be appropriately disciplined for violations of Exchange rules.

### *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.

<sup>6</sup> PCX Rule 6.84(g) currently provides that "[j]oint accounts shall not be permitted to enter: (1) opening transactions from off the Floor for option contracts listed on the Exchange; (2) any transactions for option contracts not listed on the Exchange; and (3) transactions for any other security. This prohibition shall not apply to transactions entered for securities underlying Exchange option contracts in the joint account."

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(6).

## 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, as amended, 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 filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2003-31 and should be submitted by October 20, 2003.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48500; File No. SR-PCX-2003-36]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Composition of Its Audit Committee

September 17, 2003.

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 July 14, 2003, 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 PCX. On August 21, 2003, PCX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice, as amended, 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 Exchange is proposing to amend its rule regarding its own audit committee composition. This change is aimed at helping improve the Exchange's corporate governance. Proposed new language is in italics.

#### RULES OF THE BOARD OF GOVERNORS

##### Rule 11

Committees of the Exchange

11.8(a)-(b)—No change.  
Audit Committee

11.8(c). The Audit Committee shall be comprised of at least three Governors. *The Committee shall be made up entirely of Public Governors, and at least one member of the Committee shall have accounting or related financial management expertise, as the Board of Governors interprets such qualification in its business judgment.* The Committee shall have the responsibility to conduct an annual review with the independent auditors, to determine the scope of their examination and the cost thereof. The

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

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

<sup>3</sup> See Letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, to Leah Mesfin, Attorney, Division of Market Regulation, Commission, dated August 21, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange completely replaced the rule language submitted with the original filing.

<sup>10</sup> 17 CFR 200.30-3(a)(12).