

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51113; File No. SR-PCX-2005-08)

January 31, 2005

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

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 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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).

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.

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.

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

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).

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.

¹² 15 U.S.C. 78s(b)(3)(A)

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ Id.

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 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.

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).

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 [insert date 21 days from publication in the Federal Register].

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

Margaret H. McFarland
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).