SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-49495; File No. SR-PCX-2004-16)

March 29, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Trading Hours for Options on Exchange-Traded Funds

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 March 10, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the PCX. The PCX filed the proposal pursuant to Section 19(b)(3)(A) under 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 proposes to amend Commentary .02 to PCX Rule 4.2, "Trading Sessions," to provide that options on exchange-traded funds ("ETFs") will trade until 1:15 p.m. (Pacific Time) each business day. The text of the rule appears below. Additions are italicized.

Trading Sessions

Rule 4.2 – No change.

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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 has 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).

Commentary:

.01 – No change.

.02 The hours for trading options on Nasdaq-100 Index Tracking Stock and options on Exchange Traded Funds will commence at 6:30 a.m. and end at 1:15 p.m. each business day, except the last trading day of each calendar month, when trading in options on Nasdaq-100 Index tracking Stock will end at 1:05 p.m.

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

The PCX's rules permit members to effect transactions on the options floor of the PCX until 1:02 p.m. (Pacific Time) for equity options and until 1:15 p.m. (Pacific Time) for index options each business day.[6] The PCX's rules also provide that the hours for trading options on the Nasdaq-100 Index Tracking Stock ("QQQs") commence at 6:30 a.m. (Pacific Time) and end at 1:15 p.m. (Pacific Time) each business day except the last trading day of each calendar month, when trading in options on the QQQs ends at 1:05 p.m. (Pacific Time).

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[6] See PCX Rule 4.2, Commentary .01.

The purpose of the proposal is to establish the hours of trading in options on ETFs from 6:30 a.m. (Pacific Time) to 1:15 p.m. (Pacific Time) except the last trading day of each calendar month, when trading in options on the QQQs will end at 1:05 p.m. (Pacific Time). According to the PCX, with the exception of the last trading day of each calendar month, the proposal applies the same trading hours to options on index products, options on the QQQs, and options on all other ETFs. The PCX believes that although ETFs are not themselves index option products,[7] they nonetheless are designed to closely track the price and yield performance of the index products and should be evaluated the same way for the purpose of establishing trading hours for ETFs.

2. Statutory Basis

The PCX believes that the proposed amendments will assist in allowing the PCX to offer investors the same trading session for options on ETFs that it affords to trading options on index products. The PCX believes that the proposal is consistent with Section 6(b)(5) of the Act[8] 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.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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[7] For example, the QQQs represent ownership in the Nasdaq-100 Trust, a long-term unit investment trust established to accumulate and hold a portfolio of the equity securities that comprise the Nasdaq-100 Index. The Nasdaq-100 Index includes 100 of the largest non-financial companies listed on the Nasdaq National Market. The Nasdaq-100 reflects Nasdaq's largest growth companies across major industry groups with all index components having a market capitalization of at least $500 million and an average daily trading volume of at least 100,000 shares.

[8] 15 U.S.C. 78f(b)(5).

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

The PCX neither solicited nor received written comments on the proposed rule change.

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

The PCX has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b-4 thereunder.[10] Because the foregoing proposed 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 of filing, 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 Act and Rule 19b-4(f)(6) thereunder. As required under Rule 19b-4(f)(6)(iii), the PCX provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b-4(f)(6) 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 PCX has requested that the Commission waive the 30-day operative delay specified in Rule 19b-4(f)(6) to allow the PCX to implement the proposed rule change as quickly as possible. In this regard, the PCX believes that the proposal is non-controversial because the Exchange seeks to maintain the uniformity of the trading session for all index options, options on

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b-4(f)(6).

the QQQs, and options on all ETFs. As a result, the PCX believes that the proposed rule change does not raise new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. The PCX believes that its request is consistent with the protection of investors and the public interest and that good cause exists, including the PCX's need to maintain competition and efficiency.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because other options exchanges currently permit options on ETFs to trade until 4:15 p.m. (Eastern Time).[11] Accordingly, the PCX's proposal will make the PCX's rules consistent with the rules of other options exchanges. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and the Commission designates the proposal to be operative upon filing with the Commission.[12]

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 it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth

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[11] Telephone conversation between Mai Shiver, Acting Director/Senior Counsel, Regulatory Policy, PCX, and Yvonne Fraticelli, Special Counsel, Division of Market Regulation, on March 26, 2004.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Street, NW, Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-PCX-2004-16. The 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 at 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-2004-16 and should be submitted by [insert date 21 days after the date of this publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland
Deputy Secretary

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[13] 17 CFR 200.30-3(a)(12).