

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49865; File No. SR-PCX-2004-38)

June 15, 2004

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Pacific Exchange, Inc. for the Extension of a Pilot Program Limiting Liability for Trade-Throughs at the End of the Trading Day

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 April 26, 2004, the Pacific Exchange, Inc. (“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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval to the proposed rule change.

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 limitations on Trade-Through³ liability pursuant to the Linkage Plan that occur from five minutes before the close of trading of the underlying security to the close of trading in the options class. The pilot program would be

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A “Trade-Through” is defined as a transaction in an options series at a price that is inferior to the national best bid or offer in an options series calculated by a Participant. See Section 2(29) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Linkage Plan”). A “Participant” is defined as an Eligible Exchange whose participation in the Linkage Plan has become effective pursuant to Section 4(c) of the Linkage Plan. See Section 2(24) of the Linkage Plan. Currently, the Participants in the Linkage Plan are the International Securities Exchange, Inc., the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the PCX, the Philadelphia Stock Exchange, Inc. and the Boston Stock Exchange, Inc.

extended to January 31, 2005 and would increase the limit on Trade-Through liability during the last seven minutes of the trading day from 10 contracts to 25 contracts per Satisfaction Order.

The text of the proposed rule change is available at the Exchange 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 III 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 purpose of the proposed rule change is to extend the pilot provision in the PCX Rules that limits Trade-Through liability during the last seven minutes of the trading day.⁴ Pursuant to the pilot currently in effect, an Exchange member's Trade-Through liability is limited to 10

⁴ The PCX has separately filed Joint Amendment No. 12 to the Linkage Plan to implement substantially the same change to the Linkage Plan. See Securities Exchange Act Release No. 49692 (May 12, 2004), 69 FR 29956 (May 19, 2004) (Notice of Joint Amendment No. 12). The Commission previously approved the pilot to implement a limitation on Trade-Through liability during the last seven minutes of the trading day on a 120-day temporary basis on January 31, 2003. See Securities Exchange Act Release No. 47298, 68 FR 6524 (February 7, 2003). On June 18, 2003, the Commission approved the pilot until January 31, 2004. See Securities Exchange Act Release No. 48055, 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4). The Commission subsequently extended the pilot until June 30, 2004. See Securities Exchange Act Release No. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving Joint Amendment No. 8).

contracts per Satisfaction Order⁵ 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.

This proposal would extend the pilot for an additional seven months, until January 31, 2005. In addition, the proposal would increase the limit on Trade-Through liability during the last seven minutes of the day from 10 contracts to 25 contracts per Satisfaction Order. This increase in the limit on liability would be effective on July 1, 2004, when the current pilot expires. The time period during the trading day in which this limit would apply would 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.

As a condition to granting permanent approval of this limitation, the Commission required that the Participants provide the Commission with a report regarding data on the use of the exemption no later than 60 days before seeking permanent approval (the "Report"). The Participants have provided the Commission with certain information required in the Report, and continue to discuss with Commission staff what additional information the staff may need to evaluate possible permanent approval of the Trade-Through limitation. This extension would allow the limitation to continue in effect, with the increase in liability to 25 contracts per Satisfaction Order, while the Commission staff and the Participants continue to discuss permanent approval.

⁵ A "Satisfaction Order" is defined as an order sent through the Options Intermarket Linkage to notify a member of another Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. See Section 2(16) of the Linkage Plan.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ 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 result in 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 were neither solicited nor received.

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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2004-38 on the subject line.

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-2004-38. 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 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-2004-38 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

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.⁸ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act⁹, which requires, among other things, that the rules of a national securities exchange be 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 to protect investors and the public interest. The Commission believes that extending the pilot will enable Participants to continue to compile the data necessary for the Commission to determine whether permanent approval of the proposed rule change is appropriate and in the public interest. The Commission further believes that raising the limitation in liability for Satisfaction Orders during the last seven minutes of the trading day from 10 contracts to 25 contracts for this pilot period should help to protect investors and promote the public interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the Federal Register. As noted above, the proposed rule change incorporates changes into the PCX Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 12, which was published for

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

public comment in the Federal Register on May 19, 2004.¹⁰ The Commission received no comments in response to publication of Joint Amendment No. 12. The Commission believes that no new issues of regulatory concern are being raised by PCX's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 19(b) of the Act.¹¹

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-PCX-2004-38) is approved on an accelerated basis.

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

Margaret H. McFarland
Deputy Secretary

¹⁰ See supra note 4.

¹¹ 15 U.S.C. 78f and 78s(b).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).