

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49890; File No. SR-PCX-2004-33)

June 17, 2004

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to How Members Handle Principal Acting as Agent Orders pursuant to Intermarket Linkage

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 15, 2004, 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 and II below, which Items have been prepared by the self-regulatory organization. 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 Exchange is proposing to amend the requirements regarding how our Members handle Principal Acting as Agent Orders (“P/A Orders”) pursuant to the intermarket linkage (“Linkage”). 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 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

¹ 15 U.S.C. 78s(b)(1).

Item IV below. The self-regulatory organization 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 change is to implement Joint Amendment No. 10 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Linkage Plan”).³ That amendment, together with this proposed rule change, will clarify the manner in which a PCX Member may send P/A Orders that are larger than the Firm Customer Quote Size (“FCQS”). A P/A Order is an order for the account of a PCX Lead Market Maker (“LMM”) or a specialist or specialist equivalent account on another exchange for its own account reflecting the terms of an unexecuted customer order for which the LMM has responsibility. The FCQS is the minimum size for which an exchange must provide an execution in its automatic execution system for a P/A Order, if the exchange’s auto-ex system is available.

Currently, Linkage Plan Section 7(a)(ii)(B) and PCX Rule 6.93 (“PCX Rule”) provide a LMM with two ways to handle such orders. First, the LMM may send a P/A Order larger than the FCQS for manual processing at the receiving exchange. Second, the LMM may send an initial P/A Order for up to the FCQS. If the LMM then seeks to send another P/A Order, it must send an order for the lesser of the entire remaining size of the underlying customer order or 100 contracts.

²

17 CFR 240.19b-4.

³

See Securities Exchange Act Release No. 49689 (May 12, 2004), 69 FR 28953 (May 19, 2004) (File No. 4-429) (Notice of Filing of Joint Amendment No. 10 to the Linkage Plan).

This proposed rule change addresses the handling of orders if the LMM chooses the second alternative, the sending of multiple P/A Orders. As currently drafted, the Linkage Plan and the PCX Rule do not recognize the possibility that an exchange's disseminated quotation may be for less than either the remaining size of the customer order or 100 contracts. Thus, the proposed rule change specifies that a LMM sending a second P/A Order may limit such order to the lesser of: (1) the remaining size of the customer order; (2) 100 contracts; or (3) the size of the receiving exchange's disseminated quotation.

In addition, there is a practical issue if multiple exchanges are displaying the same bid or offer. In that case, the Linkage Plan is unclear as to whether a LMM must send the entire order to one exchange or can send orders to multiple exchanges, so long as they are for the size of the entire order, or 100 contracts, in the aggregate. This proposed rule change clarifies the PCX Rule to specify that a LMM may send P/A Orders to multiple exchanges, as long as all such orders, in the aggregate, are for the lesser of the entire remaining size or 100 contracts. However, as is the case when only one exchange is at the NBBO, a LMM may limit the size of any single additional order to the size of the receiving market's disseminated quotation.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act⁵ 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

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

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 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

Written comments on the proposed rule change 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2004-33 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-2004-33. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such 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-2004-33 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.⁶ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act⁷ which requires, among other things, that the rules of an 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 to protect investors and the public interest. The Commission believes that the proposed rule change should clarify the LLM's obligations in handling P/A Orders, which should facilitate the efficient handling of P/A Orders through the Linkage.

⁶ 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).

⁷ 15 U.S.C. 78f(b)(5).

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. 10, which was published for comment on May 19, 2004.⁸ The Commission received no comments on the substance of that Amendment. 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.⁹

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-PCX-2004-33) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

⁸ See note 3, supra.

⁹ 15 U.S.C. 78f and 78s(b).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).