

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49912; File No. SR-PCX-2004-47)

June 24, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto by the Pacific Exchange, Inc. to Eliminate the Ability to Manually Trade with Orders and Quotes with Size in the Consolidated Book

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 June 10, 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, II and III below, which Items have been prepared by the Exchange. On June 22, 2004, the Exchange 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 from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to eliminate the rule that allows a Market Maker or Floor Broker to manually trade with orders and Quotes with Size<sup>4</sup> in the Consolidated Book<sup>5</sup> by vocalizing a bid or offer in a particular series and effecting a trade with the Order Book Official. The text of the proposed rule change appears below. Text to be deleted is in brackets.

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<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 Attorney, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 21, 2004 (“Amendment No 1”). In Amendment No. 1, the Exchange clarified the language describing the PCX Plus platform in the Purpose section.

<sup>4</sup> See PCX Rule 6.1(b)(33).

<sup>5</sup> See PCX Rule 6.1(b)(37).

Rules of the Board of Governors of the Pacific Exchange, Inc.

Rule 6

Options Trading

Priority and Order Allocation Procedures

Rule 6.76(a) – (d)(1)(C) – No change.

[Rule 6.76(d)(2) Market Makers and Floor Brokers may trade with orders and Quotes with Size in the Consolidated Book by vocalizing a bid or offer in a particular series and effecting a trade with the Order Book Official.]

Commentary .01 - .02 – No Change.

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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 Item IV below. 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

Currently, PCX Rule 6.76(d)(2) permits Market Makers and Floor Brokers to manually trade with orders and Quotes with Size in the Consolidated Book by vocalizing a bid or offer in a particular series and effecting a trade with the Order Book Official. The PCX represents that the

PCX Plus platform does not support the functionality required by PCX Rule 6.76(d)(2) and that the PCX does not intend to develop such functionality. As such, the PCX believes that it is necessary to remove this provision from the Exchange's rules to conform the PCX rules to currently available and contemplated future trading procedures. The Exchange is not proposing to eliminate a Member's ability to trade with orders and Quotes with Size in the Consolidated Book. Rather, the Exchange chooses to have this type of trading available only on its electronic platform, PCX Plus. Therefore, Market Makers and Floor Brokers who wish to trade with orders and Quotes with Size in the Consolidated Book may do so by obtaining and using the PCX Plus platform.

In addition to the reason set forth above, the Exchange represents that requiring Market Makers and Floor Brokers to manually interact with an Order Book Official to execute a trade is not as efficient as executing the trade electronically via PCX Plus. The Exchange also represents that, because of the inefficiencies that exist with manual interaction, no Exchange Members have requested this functionality. Therefore, the Exchange believes that removing the rule permitting this manual interaction will have no impact on the Exchange Members.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general and furthers the objectives of 6(b)(5) of the Act<sup>7</sup> 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 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.

## 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 Exchange consents, the Commission will:

- (A) by order approve such proposed rule change or

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

- (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 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](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2004-47 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-2004-47. 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 Exchange. 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-2004-47 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.<sup>8</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).