

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49948; File No. SR-PCX-2004-54)

June 30, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a Twelve-Month Extension of the Automatic Execution System Incentive Pilot Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on June 28, 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 PCX. PCX filed the proposed rule change as "non-controversial" under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6)⁴ thereunder. 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 amend its rules to extend the Automatic Execution System ("Auto-Ex") Incentive Pilot Program for one year until June 30, 2005. The text of the proposed rule change is available at PCX and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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. 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

On September 25, 2001, the Commission approved, on a nine-month pilot basis, the Exchange's proposal to amend PCX Rule 6.87 to provide an Auto-Ex⁵ Incentive Pilot Program for apportioning Auto-Ex trades among Market Makers.⁶ On June 25, 2002, the Commission approved an additional six-month extension of the pilot program.⁷ On December 24, 2002, the Commission approved an additional six-month extension of the pilot program.⁸ On June 11,

⁵ Auto-Ex is the Exchange's Automated Execution system feature of the Pacific Options Exchange Trading System ("POETS") for market or marketable limit orders. POETS is the Exchange's automated trading system comprised of an options order routing system, an automatic execution system ("Auto-Ex"), an on-line limit order book system and an automatic market quote update system. Option orders can be sent to POETS via the Exchange's Member Firm Interface ("MFI"). Market and marketable limit orders sent through the MFI will be executed by Auto-Ex if they meet order type and size requirements of the Exchange.

⁶ See Exchange Act Release No. 44847 (Sept. 25, 2001), 66 FR 50237 (Oct. 2, 2001).

⁷ See Exchange Act Release No. 46115 (June 25, 2002), 67 FR 44494 (July 2, 2002).

⁸ See Exchange Act Release No. 47088 (Dec. 24, 2002), 68 FR 140 (Jan. 2, 2003).

2003, the Commission approved a one-year extension of the pilot program.⁹ The pilot program is currently set to expire on June 30, 2004.

The Auto-Ex Incentive Pilot Program allows the Exchange to assign Auto-Ex orders to a logged-on Market Maker according to the percentage of its in-person agency contracts¹⁰ traded in an issue (excluding Auto-Ex contracts) compared to all of the Market Makers in-person agency contracts traded (excluding Auto-Ex contracts) during the review period. The review period is determined by the Exchange and may be for any period of time not in excess of two weeks.¹¹ The percentage distribution determined for a review period will be effective for the succeeding review period.

The Exchange is requesting an additional extension of the pilot program for one year from June 30, 2004 through June 30, 2005. The Exchange represents that the added time permits the Exchange to phase-in the Exchange's new trading platform for options, "PCX Plus," on an issue-by-issue basis.¹² As each issue is phased into PCX Plus, the Exchange will simultaneously phase-out such issue from the Auto-Ex Incentive Pilot Program. PCX Plus will eventually replace the Auto-Ex Incentive Pilot Program in its entirety. Therefore, the Exchange believes that a one-year extension of the program is warranted.

⁹ See Exchange Act Release No. 48019 (June 11, 2003), 68 FR 36621 (June 18, 2003).

¹⁰ Agency contracts are those contracts that are represented by an agent and do not include contracts traded between Market Makers in person in the trading crowd.

¹¹ The Exchange has set a two-week review period for all options classes and the Exchange will not vary the term of the review period except for exigent circumstances.

¹² See Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (Order approving PCX Plus).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5),¹⁴ in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

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

The Exchange has designated the proposed rule change as one that does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6)¹⁶ thereunder.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

Under Rule 19b-4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time. PCX has requested that the Commission waive the five business day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing and the PCX Auto-Ex Incentive Pilot Program can continue without interruption.

The Commission believes that waiver of the five-day pre-filing requirement and the 30-day operative delay is consistent with the protection of investors and the public interest.¹⁷ The Commission notes that the Auto-Ex Incentive Pilot Program expires on June 30, 2004. Accelerating the operative date will allow for the continued operation of PCX's Auto-Ex Incentive Pilot Program without interruption until such time as PCX Plus is fully operative. Therefore, the Commission designates the proposed rule change to be effective and operative immediately.

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.¹⁸

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

¹⁷ For purposes only 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).

¹⁸ 15 U.S.C. 78s(b)(3)(C).

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-2004-54 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-2004-54. 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 office of 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-2004-54 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.¹⁹

Margaret H. McFarland
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).