

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51608; File No. SR-PCX-2005-48)

April 26, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Revise PCX Rule 6.88 to Eliminate the Prohibition on Computer Generated Orders

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 13, 2005, 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. The Exchange has designated the proposed rule change as “non-controversial” under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 Exchange proposes to amend PCX Rule 6.88 in order to eliminate the prohibition on orders that are created and communicated electronically without manual input (“Computer Generated Orders”). Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in [brackets].

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).

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Rules of the Pacific Exchange, Inc.

Rule 6

Rule 6.88(a) – No Change.

Rule 6.88(b) Reserved. [Except as provided in subsection (b)(1), OTP Holders and OTP Firms may not enter orders via the MFI or permit the entry of orders via the MFI if those orders are created and communicated electronically without manual input (“computer generated orders”). Except as provided in subsection (b)(1), order entry by public customers or associated persons of OTP Holders and OTP Firms must involve manual input such as entering the terms of an order into an order-entry screen or manually selecting a displayed order so that the order will be sent. Nothing in this Rule prohibits OTP Holders or OTP Firms from electronically sending to the Exchange orders manually entered by customers into front-end communications systems (e.g., Internet gateways, online networks, etc).

(1) Computer generated orders may be sent to the Exchange via the MFI only if they are properly designated in a form and manner as prescribed by the Exchange. Orders so designated will be re-routed for representation by a Floor Broker. Computer generated orders are not eligible for automatic execution via the Auto-Ex System.]

(c) – 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, 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 Exchange 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 Exchange is proposing to amend PCX Rule 6.88 to eliminate the prohibition on Computer Generated Orders. PCX Rule 6.88 was originally adopted because it was necessary to protect market makers.⁵ At the time, allowing electronic entry directly into the Exchange's Pacific Options Exchange Trading System ("POETS") could give customers with order-generating systems a significant advantage over PCX market makers. With the development of the Exchange's new electronic trading system, PCX Plus, market makers have the ability to manage their exposure more quickly and efficiently, thereby obviating the need for this rule.⁶ The Exchange no longer uses POETS. The Exchange believes that the elimination of the prohibition on Computer Generated Orders will enhance access to the Exchange, and therefore, provide more liquidity to PCX.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section

⁵ See Securities Exchange Act Release No. 43328 (September 22, 2000), 65 FR 58834 (October 2, 2000).

⁶ The Philadelphia Stock Exchange, Inc. ("Phlx") eliminated its Electronic Generation rule in 2003. See Securities Exchange Act Release No. 48648 (October 16, 2003), 68 FR 60762 (October 23, 2003). The Chicago Board Options Exchange, Incorporated ("CBOE") eliminated its Electronically Generated and Communicated Orders rule in 2005. See Securities Exchange Act Release No. 51030 (January 12, 2005), 70 FR 3404 (January 24, 2005).

6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition 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 asserts that the foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder¹⁰ because it does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposal.¹¹

PCX has requested that the Commission waive the 30-day pre-operative period, which would make the rule change operative immediately, because the proposed rule change is based on rule changes filed by the Phlx and CBOE. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case.¹² Allowing the proposed rule change to become operative immediately should enhance access to the Exchange. Moreover, the proposed rule change does not raise any new issues of regulatory concern, as the proposal is based on a rule change previously filed by the Phlx and approved by the Commission pursuant to Section 19(b)(2) of the Act,¹³ as well as a rule change previously filed by CBOE with the Commission pursuant to Section 19(b)(3)(A) of the Act.¹⁴ The Commission notes that the International Securities Exchange, Inc. also filed a similar rule change with the Commission pursuant to Section 19(b)(3)(A) of the Act.¹⁵

¹¹ As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposal.

¹² 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. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ See Securities Exchange Act Release No. 51424 (March 13, 2005), 70 FR 16321 (March 30, 2005).

At any time within 60 days of the filing of the 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 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-2005-48 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-2005-48. 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 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-2005-48 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.¹⁶

Margaret H. McFarland
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).