

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52315; File No. SR-PCX-2005-93)

August 22, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Obligations of Lead Market Makers

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 August 16, 2005, the Pacific Exchange, Inc. (“PCX”) 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 PCX has designated this proposal as “non-controversial” pursuant to Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective immediately 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 PCX proposes to amend PCX Rule 6.82 to include an additional obligation of Lead Market Makers (“LMMs”) in executing public customer orders. The text of the proposed rule change is available on the PCX’s Web site (<http://www.pacificex.com>), at the PCX’s Office of the Secretary, and at the Commission’s Public Reference Room.

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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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 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, 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 IV 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 PCX proposes to amend PCX Rule 6.82(c), Obligations of Lead Market Makers, to include a requirement that LMMs address public customer orders that are not automatically executed on the PCX because there is a better price on another exchange, by either matching the best price that is being disseminated by a competing exchange or by routing the public customer order via Intermarket Option Linkage ("Linkage") for execution at any other exchange disseminating the best price.

Similar to rules at other exchanges, PCX rules do not allow for a public customer order to be executed at a price that is inferior to a price that may be available on another exchange. The intent of this rule is to give a public customer order the opportunity to obtain the best price available in the market at any given time. Using present procedures, attempting to obtain the best possible price for the customer can be a time consuming process that could potentially result in the customer missing the best price that may have been available at another exchange.

Currently, PCX rules do not require LMMs to send public customer orders to other exchanges that cannot be executed on the PCX. In other words, currently an LMM may choose to reject a public customer order if the PCX is not quoting the NBBO, does not want to match the NBBO, and does not wish to route the public customer order away to the market that is quoting the NBBO. Under the proposal, an LMM will no longer be allowed to reject public customer orders in these circumstances; the LMM must either execute the public customer order immediately on the PCX (at the NBBO), or route the public customer order away via Linkage to the exchange displaying the best price available in the market. This additional LMM obligation would allow public customer orders initially routed to the PCX to be handled in a method that is consistent with the way public customer orders are handled at other options exchanges. Specifically, the proposed rule is consistent with Rule 803(c)(2) of the International Securities Exchange (“ISE”), and with obligations the PCX understands are imposed upon LMM equivalents in other options markets.

## 2. Statutory Basis

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

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX 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 foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder<sup>8</sup> because the proposed rule change 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 investors and the public interest. As required under Rule 19b-4(f)(6)(iii),<sup>9</sup> the PCX provided the Commission with written notice of PCX's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the filing date of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative for 30 days after the date of its filing.<sup>10</sup> However Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6)

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>10</sup> Id.

<sup>11</sup> Id.

public interest. The PCX has requested that the Commission waive the 30-day operative delay, which would make the proposed rule change operative immediately. According to the PCX, by precluding LMMs from rejecting public customer orders, the proposed rule change would enable the PCX to provide a means of executing public customer orders at the best price available in the marketplace, either by matching the better price of another exchange or by routing the order to another exchange through the Linkage. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest,<sup>12</sup> because the proposed rule change is substantially similar to a rule of another exchange.<sup>13</sup> For this reason, the Commission designates that the proposal become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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:

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<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> See ISE Rule 803(c)(2) and Supplementary Material. See also Securities Exchange Act Release No. 48756 (November 7, 2003), 68 FR 65335 (November 19, 2003) (order approving the clarification of the obligations of primary market makers when addressing a public customer order when there is a better price displayed by another market) (SR-ISE-2003-03).

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-2005-93 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2005-93. 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 the 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-2005-93 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>14</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).