

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52351; File No. SR-PCX-2005-92)

August 26, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Relating to Complex Orders

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 3, 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 the Exchange. On August 17, 2005, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The PCX filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 6.91, "Complex Orders on the PCX Plus System," to better describe the allocation methodology for individual orders or quotes residing in

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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> Amendment No. 1 revises the proposal to correct a typographical error in the original filing and to make minor changes clarifying the text of the proposed rule and the PCX's description of the proposal.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> The PCX has requested that the Commission waive both the five-day pre-filing notification requirement and the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

the Consolidated Book that execute against complex trades. The text of the proposed rule change is available on the PCX's Web site (<http://www.pacificex.com>), at the PCX, and at the Commission's Public Reference Room.

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. 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 purpose of the proposed rule change is to adopt clarifying language to better describe the allocation methodology for individual orders or quotes residing in the Consolidated Book that execute against complex trades. The Commission recently approved PCX Rule 6.91, which sets forth the procedures used to trade complex orders on the PCX Plus system.<sup>7</sup> PCX Rule 6.91 does not specifically state what the allocation methodology for individual orders or quotes residing in the Consolidated Book that execute against complex trades will be.

According to the PCX, the Exchange intended at all times and built its complex order trading system in such a way that the allocation methodology for these types of trades would be governed by PCX Rule 6.75, "Priority and Allocation Procedures," with the exception that there would be no guaranteed participation for Lead Market Makers ("LMMs") when two separate

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<sup>7</sup> See Securities Exchange Act Release No. 52060 (July 19, 2005), 70 FR 42610 (July 25, 2005) (order approving File No. SR-PCX-2005-71).

orders in the Consolidated Book matched up against a complex order in the complex trading engine (“CTE”). The PCX believes that removing the LMM guaranteed participation is appropriate because it creates more incentive for PCX market makers to improve prices when submitting orders into the CTE. With improved prices in the CTE, the PCX believes that it is more likely that individual legs of the complex order will match up against orders in the Consolidated Book, thus providing more liquidity for customer orders. The PCX believes that improving prices and creating more competition among PCX market makers for complex order trade allocations is beneficial to the public. According to the PCX, the proposed rule change now clearly states the allocation methodology for these types of trades.

Amendment No. 1 revises the proposal to correct a typographical error in the original filing and to make minor clarifying changes to the text of PCX Rule 6.91(c)(3)(i) and to the PCX's description of the proposal.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> 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

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

Pursuant to Rule 19b-4(f)(6)(iii) under the Act,<sup>12</sup> a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its 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 date of filing of the proposed rule change, or such shorter time as designated by the Commission. The PCX has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay. The PCX notes that the proposal clarifies the intent of PCX Rule 6.91. In addition, the PCX believes that the proposal will allow more efficient and effective market operation by enabling the PCX to provide a competitive means of trading complex orders.

The Commission waives the five-day pre-filing requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

investors and the public interest because the proposal merely clarifies the intent of PCX Rule 6.91 and does not raise significant regulatory issues.<sup>13</sup> For these reasons, the Commission designates that the proposed rule change 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.<sup>14</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2005-92 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.

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<sup>13</sup> For purposes 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>14</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the proposed rule change to have been filed on August 17, 2005, the date on which the PCX filed Amendment No. 1.

All submissions should refer to File No. SR-PCX-2005-92. 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 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 No. SR-PCX-2005-92 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>15</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).