

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52523; File No. SR-PCX-2005-98)

September 28, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend Its Minor Rule Plan and Recommended Fine Schedule in Connection with Rules Regarding Principal Orders, Principal Acting as Agent Orders, and Limitations on Principal Order Access

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” 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 September 27, 2005, 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, as amended, from interested persons.

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

PCX proposes to amend its Minor Rule Plan (“MRP”) and Recommended Fine Schedule (“RFS”) under PCX Rule 10.12 with respect to provisions of the PCX Options Linkage program (“Linkage”) that relate to Principal Orders (“P Orders”), Principal Acting as Agent Orders (“P/A Orders”), and Limitations on Principal Order Access. The text of the proposed rule change is

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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> In Amendment No. 1, the Exchange incorporated additional provisions under PCX Rule 6.93 to apply to the Minor Rule Plan and Recommended Fine Schedule, provided more detailed descriptions of the PCX Rules that would apply to the Minor Rule Plan and Recommended Fine Schedule under this proposed rule change, and made other non-substantive changes to clarify the purpose of the proposal.

available on the Exchange's Internet Web site (<http://www.pacificex.com>), at the Exchange's principal office, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's MRP, which incorporates the RFS, under PCX Rule 10.12 provides for an abbreviated procedure for the resolution of minor rule violations. The Exchange is proposing to amend the MRP and RFS to bring additional rules within their coverage. PCX believes that inclusion of such matters would provide a fair means of promptly resolving minor rule violations that do not rise to the level of formal disciplinary proceedings and enforcement action.

Specifically, the Exchange is proposing to add the violation of its Linkage rules relating to: (i) P Orders and P/A Orders (PCX Rules 6.93(a), (b), (c)(1), (d), and (e)), which require OTP Holders and OTP Firms<sup>4</sup> to observe certain time constraints and Linkage order procedures in sending and receiving P Orders and P/A Orders through Linkage; and (ii) Limitations on Principal Order Access (also known as 80/20) (PCX Rule 6.96), which prohibits the sending of P Orders in an eligible option class through Linkage for a given quarter if a market maker effected

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<sup>4</sup> The terms "OTP Holder" and "OTP Firm" are defined in PCX Rules 1.1(q) and 1.1(r), respectively.

20 percent or more of its volume by sending P Orders through Linkage. As proposed, an OTP Holder or OTP Firm, who fails to follow the Linkage rules set forth above, would be fined \$500 for the first violation, \$1,000 for the second violation, and \$2,500 for the third violation.<sup>5</sup>

The Exchange believes that the proposed rule change would strengthen the ability of the Exchange to carry out its oversight responsibilities as a self-regulatory organization. The Exchange also believes that the proposed rule change should aid PCX in carrying out its surveillance and enforcement functions. The Exchange represents that it does not minimize the importance of compliance with these rules and all other rules subject to the imposition of fines under the Exchange's MRP. The Exchange relies on its MRP as a tool to address enumerated violations to provide the Exchange with greater flexibility in addressing violations that may not require formal disciplinary proceedings. Under the proposed rule change, the Exchange's Enforcement Department would continue to exercise its discretion under PCX Rule 10.12(f) and pursue certain cases as a formal disciplinary matter under PCX Rule 10.4 to the extent that the facts or circumstances warrant such action.<sup>6</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it would promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national

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<sup>5</sup> If the PCX determines that a violation is not minor in nature, including repeated violations of a PCX Rule, the PCX may, at its discretion, proceed under PCX Rule 10.4 (Complaints) rather than under the MRP. See PCX Rule 10.12(f).

<sup>6</sup> See supra note 5.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

market system, and protect investors and the public interest. The proposal is also consistent with, and furthers the objectives of, Sections 6(b)(6) and 6(b)(7) of the Act<sup>9</sup> in that it would help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange, and provide a fair procedure for disciplining members and persons associated with members.

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

The Exchange does not believe that the proposed rule change would 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 self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

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<sup>9</sup> 15 U.S.C. 78f(b)(6) and (7).

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-2005-98 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-PCX-2005-98. 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, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices 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-2005-98 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>10</sup>

Jonathan G. Katz  
Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).