

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52542; File No. SR-PCX-2005-85)

September 30, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 2 and 3 Thereto Relating to Exposure of Orders in the PCX Plus Crossing Mechanism

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 July 19, 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 PCX. The PCX filed Amendment No. 1 to the proposed rule change on September 20, 2005 and withdrew Amendment No. 1 on September 22, 2005. The PCX filed Amendment No. 2 to the proposed rule change on September 23, 2005.<sup>3</sup> The PCX filed Amendment No. 3 to the proposed rule change on September 27, 2005.<sup>4</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 is proposing to decrease the exposure period in its Crossing Mechanism from 30 seconds to 10 seconds. Minor changes are also proposed to correct typographical errors 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> In Amendment No. 2, the PCX clarified its statement of the purpose of the proposed rule change, corrected certain terminology that was inadvertently used in the rule text set forth in the original proposal, and corrected typographical errors in the text of the current rule.

<sup>4</sup> In Amendment No. 3, the PCX corrected Exhibit 4 to Amendment No. 2.

existing rule text. 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.

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

PCX rules provide that a PCX Broker may not facilitate orders or cross two orders, using the Crossing Mechanism of the PCX Plus System ("PCX Plus" or "System"), unless it enters into the System the terms of each order that is to be included as part of a Cross Order,<sup>5</sup> pursuant to PCX Rule 6.76(c)(2)(A). Both facilitation crosses and non-facilitation crosses are executed in the same manner in PCX Plus. Upon entry into PCX Plus, the System will evaluate the terms of the Cross Order and, after accepting the Cross Order, will execute the cross in accordance with PCX Rule 6.76(c)(2)(B). Among other conditions, Rule 6.76(c)(2)(B) requires a 30-second exposure period in which OTP Holders and OTP Firms may enter orders to trade against the side

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<sup>5</sup> See PCX Rule 6.76(c)(1)(A), which defines Cross Order for the purposes of PCX Rule 6.76(c) as "two orders with instructions to match the identified buy-side with the identified sell-side at a specified price (the "Cross Price")."

of the Cross Order that has been designated as the Exposed Order.<sup>6</sup> It is this portion of the Crossing Mechanism rule that the PCX proposes to change.

The Exchange proposes to shorten the duration of the exposure period contained in the rules governing the Crossing Mechanism, as set forth in PCX Rule 6.76(c)(2)(B)(i)(a) and PCX Rule 6.76(c)(2)(B)(ii)(b),<sup>7</sup> from 30 seconds to 10 seconds. This shortened exposure period is fully consistent with the electronic nature of the System. Market participants on the PCX have implemented systems that monitor any updates to the PCX market including any changes resulting from orders being entered into the Crossing Mechanism and can automatically respond based upon pre-set parameters. In this electronic environment, it is not necessary to provide an exposure time sufficiently long to permit a person to manually respond to an updated market in order to provide the opportunity for crowd interaction. Thus, an exposure period of 10 seconds will permit exposure of orders on the PCX in a manner consistent with the Exchange's electronic market.

By reducing the exposure period from 30 seconds to 10 seconds the PCX believes that OTP Holders and OTP Firms will be able to provide liquidity to their customers' orders on a timelier basis, thus providing investors with more speedy executions. Timely and accurate executions are consistent with the principles under which PCX Plus was developed.

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<sup>6</sup> See PCX Rule 6.76(c)(1)(D), which defines "Exposed Order" as follows: "the buy or sell side of a Cross Order that has been designated by a PCX Broker as the side to be exposed to the market and that is eligible for execution against all trading interest. Public Customer orders will always be deemed to be the Exposed Order in a Cross Order. In the case of a Cross Order involving a non-customer on both the buy side and sell side, the PCX Broker must designate one side of the Cross Order as the Exposed Order."

<sup>7</sup> PCX Rules 6.76(c)(2)(B)(i) and 6.76(c)(2)(B)(ii) govern the execution of Cross Orders when the Cross Price is between the Best Bid and Offer ("BBO") and when it is at the BBO, respectively.

The PCX also proposes to change a phrase in the text in Rule 6.76(c)(2)(B)(i)(b) and Rule 6.76(c)(2)(B)(ii)(b) from “OTP Holder or OTP Firm” to “OTP Holders and OTP Firms”. It has always been the intent of the PCX to have the pluralized version of the terms as part of the rules.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>8</sup> that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will provide investors with more timely execution of their options orders, while ensuring that there is an adequate exposure of all crossing orders in the PCX marketplace.

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

The proposed rule change does not 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

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 PCX 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:

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-2005-85 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-2005-85. 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-2005-85 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>9</sup>

Jonathan G. Katz  
Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).