

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52732; File No. SR-PCX-2005-98)

November 3, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto to Amend the 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

On August 16, 2005, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend its Minor Rule Plan (“MRP”) and Recommended Fine Schedule 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 (collectively, “Linkage Rules”). On September 27, 2005, PCX filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on October 4, 2005.<sup>3</sup> The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the

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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> See Securities Exchange Act Release No. 52523 (September 28, 2005), 70 FR 57918.

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Act,<sup>5</sup> because a rule that is reasonably designed to require Exchange members to comply with its Linkage Rules should help protect investors and the public interest. The Commission also believes that handling violations of Linkage Rules pursuant to the MRP is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,<sup>6</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, because existing PCX Rule 10.12 provides procedural rights to a person fined under the MRP to contest the fine and permits a hearing on the matter, the Commission believes the MRP, as amended by this proposal, provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.<sup>7</sup>

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by

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

<sup>6</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

<sup>7</sup> 15 U.S.C. 78f(b)(7) and 78f(d)(1).

Rule 19d-1(c)(2) under the Act<sup>8</sup> which governs minor rule violation plans. The Commission believes that the proposed change to the MRP will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with PCX rules and all other rules subject to the imposition of fines under the MRP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the MRP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that PCX will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRP or whether a violation requires formal disciplinary action under PCX Rules 10.4 and 10.12(f).

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<sup>8</sup> 17 CFR 240.19d-1(c)(2).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>9</sup> and Rule 19d-1(c)(2) under the Act,<sup>10</sup> that the proposed rule change (SR-PCX-2005-98), as amended, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Jonathan G. Katz  
Secretary

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 240.19d-1(c)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).