

competence for persons associated with Exchange members and member organizations.

In addition, under Section 6(c)(3)(B) of the Act,<sup>5</sup> the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange has developed an examination that will be administered to establish that Trading Assistants have attained specified levels of competence and knowledge.

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

The Exchange believes that the proposal 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*

Comments were neither solicited nor received.

### **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 the 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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. 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 will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR-NYSE-98-36 and should be submitted by December 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.<sup>6</sup>

**Margater H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-40739; File No. SR-PCX-98-56]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to ASAP Members' Access to OptiMark**

December 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>1</sup> notice is hereby given that on November 6, 1998, 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 PCX.<sup>2</sup> 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**

PCX is proposing to change PCX Rule 1.14(a) to reflect that Members with Automated System Access Privileges ("ASAP") shall be entitled to access OptiMark.<sup>3</sup> Below is the text of the

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Amendment No. 1 was received on November 27, 1998, the substance of which is incorporated into this notice. Letter from Robert Pacileo, Senior Attorney, Regulatory Policy, PCX, to Michael Walinkas, Deputy Director, Division of Market Regulation, Commission, dated November 25, 1998.

<sup>3</sup> The OptiMark System is a computerized screen-based trading service intended for use by PCX members and their customers to provide automatic

proposed rule change. Proposed new language is in *italics*.

\* \* \* \* \*

#### Electronic Access Membership

#### ¶ 3085 "Automated System Access Privileges (ASAP)"

Rule 1.14(a). No Change.

(1)-(2) No Change.

(3) The ASAP Member shall be entitled to access to P/COAST, POETS, *OptiMark*, and any other systems approved by the Board of Governors;

(4)-(7) No Change.

\* \* \* \* \*

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, 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. 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**

PCX proposes to amend PCX Rule 1.14(a)(3) to add OptiMark to the list of systems approved for ASAP Members' access. The Exchange proposes to make this change to Rule 1.14(a)(3) to codify that ASAP Members are entitled to access OptiMark.

#### 2. Statutory Basis

PCX believes the proposed rule change is consistent with Section 6(b)<sup>4</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>5</sup> in particular, because it is designed to promote just and equitable principles of trade, and to protect investors and the public interest.

order formulation, matching, and execution capabilities in the equity securities listed or traded on the Exchange. The OptiMark System is intended to be used in addition to the Exchange's traditional floor facilities to buy and sell securities on the PCX by allowing PCX members and their customers to submit ranges of trading interest anonymously from their computer terminals. The OptiMark System would then identify specific orders capable of execution and all orders matched by the system would be automatically executed on the Exchange. See Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997).

<sup>4</sup> 15 U.S.C. 78f(b).

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

<sup>5</sup> Id.

### 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

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

This proposed rule filing has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and subparagraph (e)(6) of Rule 19b-4 thereunder.<sup>7</sup> Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until January 2, 1998, more than 30 days from November 6, 1998, the date on which it was filed, the Commission waived the Rule 19b-4(e)(6)(iii) written notice requirement, upon the request of PCX.<sup>8</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of PCX.

All submissions should refer to File No. SR-PCX-98-56 and should be submitted by December 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40734; File No. SR-PCX-98-55]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Crossed Markets Adjustments

December 1, 1998.

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 November 5, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 30, 1998, the PCX submitted to the Commission an amendment to the proposed rule change.<sup>3</sup> 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 is proposing to clarify its rules on the automatic execution of option orders when the PCX market and the market of a competing exchange are crossed or locked (*i.e.*, the bid

disseminated through the facilities of one exchange is higher than or equal to the offer disseminated through the facilities of another exchange). The change is intended to make consistent the Exchange's rules on the handling of electronic orders in such circumstances. The text of the proposed rule change follows. Additions to the proposed rule are in *italics*; deletions are in [brackets].

Text of the Proposed Rule Change

¶ 5231 Automatic Execution System

Rule 6.87(a)-(c)—No Change.

(d) Auto-Ex NBBO. The Options Floor Trading C[c]ommittee ("OFTC") may designate electronic orders in an option issue to receive automatic executions at prices reflecting the national best bid or offer ("NBBO"), provided that the OFTC may designate, for an option issue, that an order will default for manual representation in the trading crowd if: (1) the order would be executed at a price that is more than one trading increment away from the PCX market price; or (2) the NBBO is crossed or locked].

(e) *Crossed or Locked Markets. The OFTC may designate, for an option issue, that an order will default for manual representation in the trading crowd if the NBBO is crossed or locked.*

#### 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 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

On September 8, 1998, the Commission approved a PCX rule change regarding the automatic execution of option orders.<sup>4</sup> The rule change provides that the Exchange's Options Floor Trading Committee ("OFTC") may designate electronic orders in an option issue to receive automatic executions at prices reflecting the National Best Bid or Offer

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The proposed rule change was originally filed pursuant to Section 19(b)(3)(A)(ii) of the Act. The amendment converted the proposed rule change to a filing pursuant to Section 19(b)(2) of the Act. Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX to Kelly McCormick, Attorney, Division of Market Regulation, SEC, dated November 27, 1998 ("Amendment No. 1").

<sup>4</sup> Exchange Act Release No. 40412 (September 8, 1998), 63 FR 49626 (September 16, 1998) (SR-PCX-98-27).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(e)(6).

<sup>8</sup> See Amendment No. 1.