

of such orders at the limit price when certain conditions occur in the primary market. Specifically, these provisions obligate a CHX specialist to fill limit orders in his book if there is a trade-through of the limit price in the primary market. These rule provisions were enacted as a means of attracting order flow to the CHX by guaranteeing that a limit order resident in a CHX specialist's book would receive a fill if the primary market traded through the limit price. The CHX specialist is willing to provide this "trade-through protection" to its customer limit orders because the CHX specialist can seek relief via ITS in the event of a trade-through.

Now that the Exemption has become effective, however, certain primary market trade-throughs in ETFs that will trigger a CHX specialist's obligation to provide trade-through protection will now constitute Exempt Trade-Throughs, and will leave the CHX specialist without recourse to seek satisfaction from the primary market. While the CHX believes that certain CHX specialists may still wish to provide trade-through protection to their limit orders for business and marketing reasons, the CHX believes that trade-through protection should no longer be mandated in the case of Exempted Trade-Throughs. The proposed rule change would permit, but would not require, a CHX specialist firm to fill limit orders in his book when an Exempted Trade-Through occurs in the primary market.

On September 4, 2002, the CHX filed an identical proposed rule change with the Commission; the rule change was effective upon filing, for a period of 30 days.<sup>5</sup> The CHX also filed the rule change seeking permanent approval thereof following notice and comment pursuant to Section 19(b)(2) of the Act, but the comment period following publication of the proposal in the **Federal Register** has not yet expired.<sup>6</sup> Accordingly, the CHX is filing this submission to extend the existing pilot for an additional period of 30 days, until November 3, 2002, during which time the CHX hopes to obtain the Commission's permanent approval of the proposed rule change.

## 2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations

<sup>5</sup> See Securities Exchange Act Release No. 46557 (September 26, 2002), 67 FR 61941 (October 2, 2002).

<sup>6</sup> See Securities Exchange Act Release No. 46556 (September 26, 2002), 67 FR 61940 (October 2, 2002).

thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>7</sup> The CHX believes the proposal is consistent with Section 6(b)(5) of the Act<sup>8</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>9</sup> and subparagraph (f)(1) of Rule 19b-4 thereunder.<sup>10</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 proposal 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, 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

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

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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>10</sup> 17 CFR 240.19b-4(f)(1).

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 such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-2002-33 and should be submitted by November 5, 2002.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46605; File No. SR-PCX-2002-60]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Joint Accounts

October 4, 2002.

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 September 23, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposal 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 6.84 in order to allow a market maker to participate in more than two joint accounts. The text of the proposed rule change is below. The deleted text is in brackets.

#### Text of the Proposed Rule Change

Rule 6.84(a). No Market Maker shall, directly or indirectly, hold any interest or participate in any joint account for buying or selling any option contract or

<sup>11</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.

related security unless (1) each participant in such joint account is a member or member organization of the Exchange, and (2) such joint account agreement is filed with (in a form approved by the Exchange) and approved by the Exchange. [No Market Maker shall, directly or indirectly, concurrently hold any interest or participate in more than two joint accounts.]

(b)-(h)—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, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received. 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 those statements.

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

#### 1. Purpose

PCX rules allow market makers to participate in joint accounts. Under PCX Rule 6.84, a market maker may not participate or hold an interest in more than two joint accounts. This limitation was incorporated into the PCX's rules in 1990.<sup>3</sup> The PCX believes that the joint account limitation may have been imposed originally for the administrative ease of the PCX, but that it does not currently provide any administrative benefit. Furthermore, the PCX believes that the limitation was never intended to create, and does not currently provide, any regulatory safeguards. For instance, the PCX notes that it may track a market maker's activity within a joint account by reference to the badge number associated with a given transaction, regardless of the number of joint accounts in which the market maker participates.

From time to time, market makers have found it necessary, for logistical reasons, to participate in more than two joint accounts. Because the PCX believes that there is no benefit to the investing public in limiting the number of joint accounts in which a market maker participates, the PCX now seeks to remove that limitation and allow

market makers to enter into as many joint accounts as their business requires. The PCX believes that the proposed change is consistent with the joint account rules of other options exchanges that do not limit the number of joint accounts in which their market makers or specialists may enter.<sup>4</sup>

#### 2. Basis

The PCX believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The PCX does not believe that the proposed rule change will impose any burden on competition.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PCX submitted a draft of this filing, including the proposed new rule text, to the Commission on September 11, 2002 in fulfillment of the five-day draft notice period of Rule 19b-4(f)(6).<sup>7</sup> The PCX has further designated that the 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 for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the proposed rule change has become effective immediately upon filing with the Commission pursuant to

Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> At any time within 60 days after 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.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>10</sup> does not become operative until 30 days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. The PCX has requested that the Commission accelerate the implementation of this proposed rule change so that it may take effect before the 30-day period specified in Rule 19b-4(f)(6)(iii).<sup>11</sup> The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day period and to designate that the proposed rule change has become operative as of September 23, 2002, the date the PCX filed the proposal with the Commission.<sup>12</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 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 20549-0609. 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 PCX. All submissions should refer to File No.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> *Id.*

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

<sup>12</sup> The Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation for the sole purpose of accelerating the operative date of the proposed rule change. 15 U.S.C. 78c(f).

<sup>4</sup> The PCX notes, for example, that current PCX Rule 6.84(a) is virtually identical to Chicago Board Options Exchange ("CBOE") Rule 8.9(c), except that the CBOE rule does not restrict the number of joint accounts in which a market maker may participate.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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

<sup>3</sup> See Securities Exchange Act Release No. 28134 (June 19, 1990), 55 FR 26320 (June 27, 1990).

SR-PCX-2002-60 and should be submitted by November 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46617; File No. SR-PCX-2002-58]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend the Definition of "Primary Only Order"

October 8, 2002.

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 September 16, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX. PCX filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 Exchange, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange, the equities trading facility of PCXE, by amending the definition of "Primary Only Order" ("PO Order") to permit ETP Holders and Sponsored Participants<sup>5</sup> on the Archipelago Exchange to enter such orders at times other than just prior to the primary market opening. Under the proposal, PO Orders may be entered until a cut-off time determined from time to time by

the PCXE. Below is the text of the proposed rule change. New text is in *italics*, while deletions appear in [brackets].

\* \* \* \* \*

#### PCX Equities, Inc.

##### Rule 7

##### Equities Trading

##### Orders and Modifiers

Rule 7.31(a)-(w)—No change.

(x) Primary Only Order (PO Order).

For exchange-listed securities only, a market order that is to be routed as a market[on-open] order to the primary market [for participation in the primary market opening or re-opening process]. *Such PO Orders may be entered until a cut-off time as determined from time to time by the Corporation.*

(1)-(2)—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. 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

The Archipelago Exchange ("ArcaEx") commenced operations on March 22, 2002, replacing the PCXE's traditional trading floor facilities. As part of its continuing review of the system's functionality and rules, the Exchange proposes to amend the definition of a PO Order to permit ETP Holders and Sponsored Participants (collectively "Users") on ArcaEx to enter such orders at times other than just prior to the primary market opening. Under the proposal, PO Orders may be entered until a cut-off time determined from time to time by the Exchange.

As defined in Rule 7.31(x), a PO Order is a market order, for exchange-listed securities only, that is to be routed as a market-on-open order to the designated primary market for participation in the primary market opening or re-opening process. A PO

Order bypasses the order execution processes of the ArcaEx Book and is routed directly to the designated primary market. Currently, a PO Order entered for participation in the primary market opening must be entered before 6:28 a.m. (Pacific Time). The Exchange proposes to modify the definition of a PO Order so they may be entered at times other than just prior to the primary market opening.

The proposed rule change is intended to provide Users with more flexibility as to when they may route PO Orders to the designated primary market. The Exchange believes that by expanding the time during which PO Orders may be entered, Users will have the ability to use other markets other than ArcaEx as an alternative order destination when it suits the User's investment needs. Accordingly, the Exchange believes that the proposed rule change promotes a more efficient and effective market operation, and enhances the investment choices available to Users in the handling of their orders.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)<sup>6</sup> of the Act, in general, and furthers the objectives of section 6(b)(5),<sup>7</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

##### 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

The Exchange has designated the foregoing rule change as effecting a change that: (1) Does not significantly

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>13</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> 15 U.S.C. 78s(b)(3)(A).

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

<sup>5</sup> A "Sponsored Participant" means "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29." See PCXE Rule 1.1(ft).