

proceedings. The Commission notes, however, that after the first failure by an Order Entry Firm to maintain adequate controls and procedures to monitor and supervise the entry of electronic orders pursuant to PCX Rules 6.87(c)(4) and 6.90(d)(3), the Exchange will treat subsequent violations as a formal disciplinary matter.¹¹ The Commission expects that the Exchange will continue to conduct surveillance with due diligence, and make a determination based on its findings as to whether fines of more or less than the recommended amount are appropriate for violations of rules under the MRP on a case-by-case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act¹², that the proposed rule change, including Amendment No.2 thereto (File No. SR-PCX-2004-58) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51053; File No. SR-PCX-2005-03]

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

January 18, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 11, 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 has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the PCX under section 19(b)(3)(A)(ii) of the Act,³ and Rule

19b-4(f)(2) thereunder,⁴ 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 PCX is proposing to amend its Schedule of Fees and Charges For Exchange Services ("Schedule") in order to add provisions for the handling of options on the Standard and Poor's Depository Receipts (ticker symbol "SPY") under the Exchange's marketing fee program. 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 its proposal and discussed any comments it had received regarding the proposal. 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 PCX states that the purpose of the proposed filing is to amend the Schedule in order to add provisions for the handling of SPY options under the Exchange's marketing fee program. The Exchange proposes to collect a \$1.00 per contract marketing fee for SPY options and assess this fee on all transactions except for Market Maker to Market Maker transactions. In addition, the Exchange is proposing to exclude trades of SPY options from the existing cap on marketing fees. The PCX states that this charge is necessary as a result of the costs associated with trading SPY options. The Exchange believes that capping marketing fees at \$200 per trade would put it at a competitive disadvantage to other exchanges that trade SPY options.

The Exchange has also proposed to revise the Schedule to show the change

in the symbol of the Nasdaq-100 Tracking Stock Options from QQQ to QQQQ.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act⁵ in general, and furthers the objectives of section 6(b)(4) of the Act⁶ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities for trading option contracts.⁷

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

The PCX neither solicited nor received written comments with respect to the proposed rule change.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁹ Accordingly, the proposal will take effect upon filing with the Commission. 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. Comments may be submitted by any of the following methods:

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ Telephone conversation between Steven Matlin, Senior Counsel, PCX, and Davis Liu, Attorney, Division of Market Regulation, Commission, on January 14, 2005.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹¹ See proposed PCX Rule 10.12(k)(i)45. See also Notice, *supra* note 5.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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. Please include File Number SR-PCX-2005-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2005-03. 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-2005-03 and should be submitted on or before February 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51061; File No. SR-PCX-00-15]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendments No. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 3, 4, 5, 6, and 7 Thereto by the Pacific Exchange, Inc. To Require the Immediate Display of Customer Limit Orders

January 21, 2005.

I. Introduction

On June 14, 2000, 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend PCX Rule 6.55 to require the immediate display of customer limit orders. PCX filed Amendments No. 1 and 2 to the proposed rule change on August 1, 2000,³ and October 17, 2000,⁴ respectively. The proposed rule change, as amended by Amendments No. 1 and 2, was published for comment in the **Federal Register** on November 21, 2000.⁵ No comments were received regarding the amended proposal.

PCX filed Amendments No. 3, 4, 5, 6, and 7 with the Commission on October

28, 2004,⁶ November 18, 2004,⁷ December 10, 2004,⁸ December 31, 2004,⁹ and January 7, 2005,¹⁰ respectively. This order approves the proposed rule change and Amendments No. 1 and 2 and grants accelerated approval to and solicits comment on Amendments No. 3, 4, 5, 6 and 7.

II. Description of Proposed Rule

PCX proposes to amend PCX Rule 6.55 to codify an immediate display requirement with respect to eligible customer limit orders ("Display Obligation"). The text of the proposed rule change, as amended, follows. Additions are in *italics*. Deletions are in [brackets].

Displaying Bids and Offers in the Book Rule 6.55. The limit orders in the custody of an Order Book Official [shall] constitute *the* [his] book. *Each Order Book Official shall display immediately the full price and size of any customer limit order that improves the price or increases the size of the best disseminated PCX quote.* [So far as practicable, an Order Book Official shall continuously display, in a visible manner, the highest bid and lowest offer along with an indication of the number of option contracts bid for at the highest bid and offered at the lowest offer in his book in each option contract for which

⁶ On October 28, 2004, PCX filed a Form 19b-4, which replaced the original filing and Amendments No. 1 and 2 in their entirety ("Amendment No. 3"). In Amendment No. 3, PCX proposes to revise the proposal to reflect changes to PCX's systems (*i.e.*, the approval and roll-out of PCX Plus) since the Notice was published for comment. Amendment No. 3 also added a number of exemptions to the Display Obligation, discussed in more detail below, which mirror exemptions proposed by the Chicago Board Options Exchange ("CBOE") and American Stock Exchange ("Amex") in recently-published proposals. *See* Securities Exchange Act Release Nos. 49916 (June 25, 2004), 69 FR 40422 (July 2, 2004) (SR-CBOE-2004-35) ("CBOE Notice") and 50188 (August 12, 2004), 69 FR 51495 (August 19, 2004) (SR-Amex-00-27) ("Amex Notice"), which we also approve today, *see* Securities Exchange Act Release Nos. 51063 (January 21, 2005) ("CBOE Approval") and 51062 (January 21, 2005) ("Amex Approval").

⁷ *See* letter from Tania Blanford, Staff Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division, Commission, dated November 18, 2004 ("Amendment No. 4"). In Amendment No. 4, PCX proposes a minor modification to the exemptions to the Display Obligation.

⁸ *See* Partial Amendment, dated December 10, 2004, submitted by Tania Blanford, Staff Attorney, PCX ("Amendment No. 5"). In Amendment No. 5, PCX proposes a minor modification to the exemptions to the Display Obligation.

⁹ *See* Partial Amendment, dated December 31, 2004, submitted by Tania Blanford, Staff Attorney, PCX ("Amendment No. 6"). In Amendment No. 6, PCX proposes a minor modification to the exemptions to the Display Obligation.

¹⁰ *See* Partial Amendment, dated January 7, 2005, submitted by Tania Blanford, Staff Attorney, PCX ("Amendment No. 7"). In Amendment No. 7, PCX proposes a minor modification to the exemptions to the Display Obligation.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ *See* letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 31, 2000 ("Amendment No. 1").

⁴ *See* letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division, Commission, dated September 29, 2000 ("Amendment No. 2").

⁵ *See* Securities Exchange Act Release No. 43550 (November 13, 2000), 65 FR 69979 ("Notice").

¹⁰ 17 CFR 200.30-3(a)(12).