

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 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 neither solicited nor received comments on the proposed rule change.

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

Because the foregoing 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 on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the 30-day operative delay and the five-day pre-filing notice requirement, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change immediately operative.

The Commission believes that waiving the 30-day operative delay and the five-day pre-filing notice requirement is consistent with the protection of investors and the public interest.<sup>12</sup> By waiving the 30-day

operative delay and the five-day pre-filing notice requirement, the deletion of the obsolete or unnecessary rules will take effect as of the date the PCX filed the proposed rule change.

At any time within 60 days of the filing of such 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:

#### *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-2005-21 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-2005-21. 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 offices 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-2005-21 and should be submitted on or before March 29, 2005.

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. 34-51286; File No. SR-PCX-2003-55]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Position Limits and Exercise Limits

March 1, 2005.

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 29, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by PCX. On February 25, 2005, the PCX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On February 28, 2005, the PCX filed Amendment No. 2 to the proposed rule change.<sup>4</sup> As amended by Amendment No. 1, the proposal has been submitted as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder,<sup>6</sup>

<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> Amendment No. 1, which replaced and superseded the original filing in its entirety, eliminated among other things, certain hedge exemptions and the position accountability program that were proposed in the original filing, established a new hedge exemption ("reverse collar"), requested that the increases to the standard position and exercise limits proposed in the filing be adopted as a six-month pilot basis, made various clarifying changes to the filing, and changed the statutory basis of the filing.

<sup>4</sup> Amendment No. 2 made certain technical changes to the filing.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> *Id.*

<sup>12</sup> For purposes only of waiving the 30-day operative period, the Commission has considered

the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

which renders it effective upon the filing of the amendment with the Commission. 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 proposes to amend PCX Rules 6.8 and 6.9 to increase the standard position and exercise limits for equity options contracts and options on the Nasdaq-100 Index Tracking Stock (“QQQQ”). 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 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

The Exchange is proposing to amend PCX Rules 6.8 and 6.9 to increase the

standard position and exercise limits for equity option contracts and options on the QQQQ as part of a six-month pilot program. PCX Rule 6.8 currently subjects equity options to one of five different position limits depending on the trading volume and outstanding shares of the underlying security. PCX Rule 6.9 establishes exercise limits for the corresponding options at the same levels as the corresponding option position limits. Lastly the Exchange is proposing a housekeeping change to Commentary .08 to PCX Rule 6.8.

Standard Position and Exercise Limits

The Exchange proposes to increase the standard position and exercise limits for equity option classes traded on the Exchange to the following levels:

Current Equity Option Contract Limit	Proposed Equity Option Contract Limit
13,500	25,000
22,500	50,000
31,500	75,000
60,000	200,000
75,000	250,000
Current QQQQ Option Contract Limit	Proposed QQQQ Option Contract Limit
300,000	900,000

The Exchange’s standard position limits were last increased on December 31, 1998.<sup>7</sup> Since that time, there has been a steady increase in the number of accounts that, (a) approach the position limit; (b) exceed the position limit; and (c) are granted an exemption to the standard limit. Industry analysis shows that several members firms have petitioned SROs to either eliminate position limits, or in lieu of total elimination, increase the current levels and expand the available hedge exemptions. The available data indicates that the majority of accounts that maintain sizable positions are in those classes subject to the 60,000 and 75,000 tier limits. There also has been an increase in the number of accounts that maintain sizeable positions in the lower three tiers. In addition, overall volume in the options market has continually increased over the past five years. The Exchange believes that the increase in options volume and lack of evidence of market manipulation occurrences over the past twenty years

justifies the proposed increase in the position and exercise limits.

The Exchange also proposes the adoption of a new equity hedge exemption to the existing exemption currently provided under Commentary .07 of PCX Rule 6.8. Specifically, the new provision would allow for a “reverse collar” hedge exemption to apply where a long call position is accompanied by a short put position, and the long call expires with the short put. In addition, the strike price of the long call must equal or exceed the short put, and each long call and short put position must be hedged with 100 shares of the underlying security (or other adjusted number of shares). Neither side of the long call short put can be in-the-money at the time the position is established. The Exchange believes this is consistent with existing Commentary .07(d) to PCX Rule 6.8, which provides for an exemption for a “collar”, and Commentary .07(b) and (c) to PCX Rule 6.8, which provide for a hedge exemption for reverse conversion and conversions, respectively.

Manipulation

The PCX believes that position and exercise limits, at their current levels,

no longer serve their stated purpose. The Commission has previously stated that:

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.<sup>8</sup>

As the anniversary of listed options trading approaches its fortieth year, the Exchange believes the existing surveillance procedures and reporting requirements at the PCX, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity.

<sup>7</sup> See Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (SR-CBOE-98-25) (approval of increase in position limits and exercise limits on the CBOE).

<sup>8</sup> See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-97-11) (approval of increase in position limits and exercise limits for OEX index options trading on CBOE).

In addition, routine oversight inspections of PCX's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These procedures utilize daily monitoring of markets via automated surveillance techniques to identify unusual activity in both options and in underlying stocks. Furthermore, the significant increases in unhedged options capital charges resulting from the September 1997 adoption of risk-based haircuts in combination with the Exchange margin requirements applicable to these products under Exchange rules, serve as a more effective protection than do position limits.<sup>9</sup>

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.<sup>10</sup> Options positions are part of any reportable positions and, thus, cannot be legally hidden. In addition, PCX Rule 6.6(a), which requires OTP Holders and OTP Firms to file reports with the Exchange for any customer who held aggregate long or short positions of 200 or more option contracts of any single class for the previous day, will remain unchanged and will continue to serve as an important part of the Exchange's surveillance efforts.<sup>11</sup>

The Exchange believes that restrictive equity position limits prevent large customers, such as mutual funds and pension funds, from using options to gain meaningful exposure to individual stocks. This can result in lost liquidity in both the options market and the stock market. In addition, the Exchange has found that restrictive limits and narrow hedge exemption relief restrict OTP Holders and OTP Firms from adequately facilitating customer order flow and offsetting the risks of such facilitations in the listed options market. The fact that position limits are calculated on gross rather than a delta basis also is an impediment.

#### Financial Requirements

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that an OTP Holder or OTP Firm or its customer may try to maintain an inordinately large unhedged position in an equity option. Current margin and risk-based

haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that an OTP Holder or OTP Firm must maintain for a large position held by itself or by its customer. It also should be noted that the Exchange has the authority under PCX Rule 4.16(a) to impose higher margin requirements upon a member when the exchange determines that higher requirements are warranted. Also, the Commission's net capital rule, Rule 15c3-1 under the Act,<sup>12</sup> imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement.

Finally, equity position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for the larges and most active stocks. To date, the Exchange believes that there have been no adverse effects on the market as a result of these past increases in the limits for equity option contracts.

#### Housekeeping Changes

The Exchange proposes a minor housekeeping change to Commentary .08 to PCX Rule 6.8 to correct the "Example" pertaining to the equity hedge exemption. The current Example inaccurately refers to the equity hedge exemption being limited to two times the standard limit.<sup>13</sup> Currently, there is no position limit restriction for qualified hedge strategies under the equity hedge exemption policy, thus this portion of the example is incorrect.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) if the Act<sup>14</sup> in general, and furthers the objective of section 6(b)(5) of the Act<sup>15</sup> in particular, in that it is designed 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 and perfect the mechanisms of a free and open market and to protect investors and the public interest.

#### 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 proposed rule change has been designated by the PCX as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act<sup>16</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>17</sup>

The foregoing 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) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.<sup>18</sup> Consequently, the proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

Pursuant to Rule 19b-4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay. The Commission has determined that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay.<sup>21</sup> Accelerating the operative date will allow the PCX to immediately conform its position and exercise limits and its equity option hedge exemption strategies to those of the Chicago Board Options Exchange, which were recently approved by the Commission.<sup>22</sup>

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>18</sup> As requested by the PCX, the Commission accepts the original filing as meeting the five-day pre-filing notice requirement of Rule 19b-4(f)(6).

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>22</sup> See Securities Exchange Act Release No. 51244 (February 23, 2005) (SR-BOE-2003-30).

<sup>9</sup> See Securities Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997) (File No. S7-7-94) (adopting risk-based haircuts); and PCX Rules 4.15 and 4.16.

<sup>10</sup> 17 CFR 240.13d-1.

<sup>11</sup> See PCX Rules 1.1(p), (q), and (r) (defining "OTP", "OTP Holder", and "OTP Firm", respectively).

<sup>12</sup> 17 CFR 240.15c3-1.

<sup>13</sup> See Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (approval of increase in position limits and exercise limits).

<sup>14</sup> 15 U.S.C. 78f(b).

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

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 Act.<sup>23</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, 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 No. SR-PCX-2003-55 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 No. SR-PCX-2003-55. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also 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 No. SR-PCX-2003-55 and should be submitted on or before March 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51280; File No. SR-PCX-2004-72]

#### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Clearly Erroneous Executions on the Archipelago Exchange

March 1, 2005.

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 28, 2004, 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 the Exchange. PCX filed Amendment No. 1 to the proposed rule change on December 29, 2004,<sup>3</sup> and filed Amendment No. 2 to the proposed rule change on February 15, 2005.<sup>4</sup> The Commission is publishing this notice to solicit comment 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

PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing clearly erroneous executions ("CEE") on

the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. Specifically, the Exchange proposes to combine the provisions of PCXE Rules 7.10 (Cancellation of Revisions in Transactions) and PCXE Rule 7.11 (Clearly Erroneous Policy) into one resulting rule, PCXE Rule 7.10, "Clearly Erroneous Executions." The Exchange also proposes to amend the procedures that an ETP Holder would be required to follow when seeking relief for clearly erroneous executions. Finally, the Exchange has revised its guideline listing factors it may consider in making its determinations regarding CEE. A copy of the revised guideline is available at the Exchange's Web site ([http://www.pacificex.com/legal/legal\\_home.html](http://www.pacificex.com/legal/legal_home.html)).

The text of the proposed rule change is set forth below. Additions are in *italics*. Deletions are in [brackets].

\* \* \* \* \*

#### Rule 7: Equities Trading

##### Rule 7.10. *Clearly Erroneous Executions* [Cancellation of Revisions in Transactions]

(a) *Definition.* For purposes of this Rule, the terms of a transaction executed on the Corporation are "clearly erroneous" when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. A transaction [sale] made in clearly erroneous [demonstrable] error and cancelled by both parties may be removed, if the parties do not object, subject to the approval of the Corporation. [Disagreements with respect thereto shall be referred to the appropriate trading authority of the Corporation. A dispute arising on bids, offers or sales, if not settled by agreement between the parties interested, shall be settled by the Corporation.]

(b) *Request for Corporation Review.* An ETP Holder that receives an execution on an order that was submitted erroneously to the Corporation for its own or customer account may request that the Corporation review the transaction under this Rule. Such request for review shall be made via telephone, facsimile or e-mail and submitted within fifteen (15) minutes of the trade in question. Upon receipt, the counterparty to the trade, if any, shall be notified by the Corporation as soon as practicable. Thereafter, an Officer of the Corporation or such other designee of the Corporation ("Officer") shall review the transaction under dispute and determine whether it is clearly

<sup>24</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> See Amendment No. 1, submitted by Tania Blanford, Staff Attorney, PCX ("Amendment No. 1"). Amendment No. 1 replaces the original filing in its entirety.

<sup>4</sup> See Amendment No. 2, submitted by James Draddy, Vice President, Equities Regulation, PCX ("Amendment No. 2"). Amendment No. 2 replaces the original filing and Amendment No 1 in their entirety.

<sup>23</sup> For purpose of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on February 28, 2005, the date that the PCX filed Amendment No. 2.