

and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Exchange asserts that the proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act¹² in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

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 Exchange has 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

Because the foregoing proposed rule change effects a change in an existing order entry or trading system that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting access to or availability of the system, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act,¹³ and Rule 19b-4(f)(5)¹⁴ thereunder.

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.¹⁵

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. Please include File Number SR-NYSE-2005-57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2005-57. 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 Section. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-NYSE-2005-57 and should be submitted on or before September 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52361; File No. SR-PCX-2005-58]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendments Nos. 1 and 2 Thereto Relating to Market Order Auction

August 30, 2005.

On April 22, 2005, the Pacific Exchange, Inc. ("PCX"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE") 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 its rules governing the Market Order Auction of the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. On June 27, 2005, the Exchange amended the proposed rule change and on July 8, 2005, the Exchange further amended the proposed rule change. The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on July 29, 2005.³ The Commission received no comment letters on the proposal.

The proposed rule change would clarify the Indicative Match Price definition as defined in PCXE Rule 1.1(r) which determines the price at which orders eligible for execution in the ArcaEx auctions are executed. The proposed rule change would also modify the Market Order Auction rules as described in PCXE Rule 7.35 and implement price collars based on a similar standard currently in place for ArcaEx's Closing Auction.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ In particular, the

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 52103 (July 21, 2005), 70 FR 43924.

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's

¹² 15 U.S.C. 78k-1(a)(1).

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(5).

¹⁵ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that clarifying and improving the Market Order Auction pricing mechanism on ArcaEx should provide investors with a clearer understanding of how orders will be priced at the open and may provide greater assurance that orders will be priced at prices that are substantially close to where the stock is trading.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-PCX-2005-58), as amended, be hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Jonathan G. Katz,

Secretary.

[FR Doc. E5-4919 Filed 9-8-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52366; File No. SR-PCX-2005-101]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Pilot Program Applicable to Option Strategy Executions until March 1, 2006

August 31, 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 August 25, 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

impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

prepared by PCX. The Exchange designated the proposed rule change as establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ 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

PCX proposes to amend its Schedule of Fees and Charges in order to extend the pilot program ("Pilot Program") that applies to Option Strategy Executions until March 1, 2006. The text of the proposed rule change is available on the Exchange's Web site (<http://www.pacificex.com>), at the Office of the Secretary, PCX, and at the Commission.

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

1. Purpose

The purpose of this proposed rule change is to extend the Pilot Program that applies to Option Strategy Executions until March 1, 2006.⁵ The transactions included as part of the Pilot Program include reversals and

³ 15 U.S.C. 78s(b)(3)(A)(ii)

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Securities Exchange Act Release Nos. 51645 (May 2, 2005), 70 FR 24458 (May 9, 2005) (SR-PCX-2005-47) (establishing pilot program for reversals and conversions, dividend spreads, and box spreads until September 1, 2005) and 51787 (June 6, 2005), 70 FR 34174 (June 13, 2005) (SR-PCX-2005-65) (establishing pilot program for short stock interest spreads and merger spreads until September 1, 2005).

conversions,⁶ dividend spreads,⁷ box spreads,⁸ short stock interest spreads,⁹ and merger spreads.¹⁰ Because the referenced Options Strategy Transactions are generally executed by professionals whose profit margins are generally narrow, the Pilot Program caps the transaction fees associated with such executions at \$1,000 per strategy executed on the same trading day in the same option class. In addition, there is also a monthly cap of \$50,000 per initiating firm for all strategy executions. The Exchange believes that by keeping fees low, the Exchange will be able to attract liquidity by accommodating these transactions. Extending the Pilot Program until March 1, 2006 will allow the Exchange to keep these fees low and thus continue to attract liquidity.

OTP Holders and OTP Firms who wish to benefit from the fee cap will be required to submit to the Exchange forms with supporting documentation (e.g., clearing firm transaction data) to qualify for the cap.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,¹¹ in general, and Section 6(b)(4) of the Act,¹² in particular, in that it provides for the equitable allocation of dues, fees, and other charges among its members.

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

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁶ Reversals and conversions are transactions that employ calls, puts and the underlying stock to lock in a nearly risk free profit. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration.

⁷ Dividend spreads are trades involving deep in the money options that exploit pricing differences arising around the time a stock goes ex-dividend.

⁸ Box spreads is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively.

⁹ A short stock interest spread is a spread that uses two deep in the money put options of the same class followed by the exercise of the resulting long position in order to establish a short stock interest arbitrage position.

¹⁰ A merger spread is a transaction executed pursuant to a strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices followed by the exercise of the resulting long option position.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).