

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

The ISE does not believe that the proposed rule change, as amended, would 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 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 ISE consents, the Commission will:

A. By order approve such proposed rule change, as amended; or

B. Institute proceedings to determine whether the proposed rule change, as amended, 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, 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 Number SR-ISE-2005-42 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-ISE-2005-42. 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 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 publicly available. All submissions should refer to File Number SR-ISE-2005-42 and should be submitted on or before October 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jonathan G. Katz,**  
*Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52421; File No. SR-NYSE-2005-54]

#### **Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change To Amend NYSE Rule 123C (Market on the Close Policy and Expiration Procedures) To Eliminate the Requirement To Publish Pre-Opening Market Order Imbalances on Expiration Fridays**

September 14, 2005.

#### **I. Introduction**

On July 26, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposal to amend NYSE Rule 123C (Market on the Close Policy and Expiration Procedures) to eliminate the requirement to publish pre-opening market order imbalances on expiration Fridays. The proposed rule change was published for comment in

the **Federal Register** on August 19, 2005.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change on an accelerated basis.

#### **II. Description of the Proposal**

NYSE Rule 123C contains requirements with respect to operation of the Exchange's market concerning market-on-close ("MOC") and limit-on-close ("LOC") orders as well as order entry and imbalance publication requirements for use on expiration days.<sup>4</sup> Under NYSE Rule 123C(6), the Exchange currently publishes information order imbalances, as promptly as possible after 9 a.m., only with respect to the imbalance of buy and sell market orders, and does not include buy and sell limit orders entered up to that time for execution at the opening. The NYSE proposes to eliminate the publication of pre-opening market order imbalances on expiration Fridays. The NYSE believes that the publication of only market order imbalances does not provide useful information, especially with respect to stocks which are part of an expiring index whose settlement is based on NYSE opening prices on one of those days.

#### **III. Discussion**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and

<sup>3</sup> See Securities Exchange Act Release No. 52255 (August 15, 2005), 70 FR 48792.

<sup>4</sup> NYSE Rule 123C defines an "expiration day" as "a trading day prior to the expiration of index-related derivative products (futures, options or options on futures), whose settlement pricing is based upon opening or closing prices on the Exchange, as identified by a qualified clearing corporation (e.g., the Options Clearing Corporation). The twelve expiration days are 'expiration Fridays' which fall on the third Friday in every month." On these expiration days, the Exchange has specific requirements governing the entry of orders in stocks relating to index contracts whose settlement prices are based on the opening prices on the Exchange of the stocks comprising the indices.

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>10</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.

open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that by amending NYSE Rule 123C to eliminate the publication of pre-opening market order imbalances which do not include limit orders, the NYSE will no longer disseminate information that may have been misleading to investors.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission does not believe that the proposed rule change raises novel regulatory issues. Granting accelerated approval of the proposed rule change allows the NYSE to implement the proposed rule change by the next expiration Friday. Consequently, the Commission believes that it is appropriate to grant accelerated approval to permit the Exchange to eliminate the publication of pre-opening market order imbalances on expiration Fridays as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with the reasons herein, to approve the proposal on an accelerated basis.

#### IV. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NYSE-2005-54) be, and hereby is approved on an accelerated basis.

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

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52417; File No. SR-PCX-2005-59]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving a Proposed Rule Change and Amendments No. 1 and 3 Thereto To Amend the Exchange's Trade-Through and Locked Markets Rules

September 13, 2005.

On April 27, 2005, the Pacific Exchange, Inc. ("PCX"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change

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> to implement Amendment No. 15 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage<sup>3</sup> by amending PCX Rules 6.92 and 6.95 to add a "trade and ship" exception to the definition of "Trade-Through" and add a "book and ship" exception to the provision relating to locked markets, respectively. On July 8, 2005, the PCX filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The PCX filed Amendment No. 2 to the proposed rule change on July 29, 2005 and withdrew Amendment No. 2 on August 1, 2005. The PCX filed Amendment No. 3 to the proposed rule change on August 1, 2005.<sup>5</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on August 11, 2005.<sup>6</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

Under the proposed rule change, a Participant Exchange<sup>7</sup> could trade an order at a price that is one minimum quoting increment inferior to the national best bid or offer ("NBBO") if a Linkage Order<sup>8</sup> is sent contemporaneously to the market(s) disseminating the NBBO to satisfy all interest at the NBBO price. The proposed rule change also would provide that an OTP Holder, OTP Firm, or Eligible Market Maker may book an order that would otherwise lock another market if a Linkage Order is sent contemporaneously to such other market to satisfy all interest at the lock price and only the remaining portion of

the order is booked. The PCX proposes that, under trade and ship, any execution received from the market disseminating the NBBO must (pursuant to agency obligations) be reassigned to the customer order that is underlying the Linkage Order that was sent to trade with the market disseminating the NBBO.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>9</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, 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 the proposed rule change should help to implement the Linkage Plan by facilitating the ability of PCX's participants to execute their customer orders in a timely manner and potentially could decrease the incidence of Trade-Throughs and locked markets.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-PCX-2005-59) as amended, is approved.

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

**Jonathan G. Katz,**  
Secretary.

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

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

<sup>3</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option linkage proposed by the American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, and the International Securities Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) ("Linkage Plan"). Subsequently, upon separate requests by the Philadelphia Stock Exchange, Inc., the PCX, and the Boston Stock Exchange, Inc., the Commission issued orders to permit these exchanges to participate in the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>4</sup> In Amendment No. 1, the PCX revised the rule text to use terms consistent with PCX's current rules and made clarifying changes in the purpose and statutory basis sections.

<sup>5</sup> In Amendment No. 3, the PCX made clarifying changes to the rule text and the purpose section.

<sup>6</sup> See Securities Exchange Act Release No. 52206 (August 4, 2005), 70 FR 46898.

<sup>7</sup> See PCX Rule 6.92(a)(16).

<sup>8</sup> See PCX Rule 6.92(a)(12).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

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