

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,⁷ 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,⁸ 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.⁹

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")¹ and Rule 19b-4 thereunder,² to implement Amendment No. 15 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage³ 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.⁴ 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, 2005.⁵ The proposed rule change, as amended, was published for comment in the **Federal Register** on August 11, 2005.⁶ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

Under the proposed rule change, a Participant Exchange⁷ 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 Order⁸ 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 Act⁹ and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ 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,¹² 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.¹³

Jonathan G. Katz,
Secretary.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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).

⁴ 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.

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

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

⁷ See PCX Rule 6.92(a)(16).

⁸ See PCX Rule 6.92(a)(12).

⁹ 15 U.S.C. 78f.

¹⁰ 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).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).