

temporary fee waiver for market maker and firm proprietary complex order execution fees that expired on June 30, 2003.

## 2. Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(4) of the Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.<sup>3</sup>

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

The proposed rule change does not 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change, which establishes or changes a due, fee or other charge imposed by the Exchange, has become effective pursuant to section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(2)<sup>5</sup> thereunder. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE-2003-24 and should be submitted by December 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48828; File No. SR-PCX-2003-65]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to Exchange Rules for the Automatic Executions of Intermarket Linkage Orders in Locked Markets**

November 24, 2003.

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 November 21, 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, II, and III below, which Items have been prepared by the Exchange. On November 24, 2003, the PCX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change has been filed by PCX as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.<sup>4</sup> The

<sup>6</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 letter from Mai Shiver, Acting Director, Regulatory Policy, PCX to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 21, 2003 ("Amendment No. 1"). Amendment No. 1 replaced and superceded the original filing in its entirety.

<sup>4</sup> 17 CFR 240.19b-4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under

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 is proposing to amend its rules to eliminate a Lead Market Maker's ("LMM") ability to have Linkage Orders in a locked market default for manual representation when those orders would otherwise be automatically executed via the Exchange's automatic execution ("Auto-Ex") system.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*; deletions are in [brackets].

\* \* \* \* \*

## Rule 6

### Options Trading

#### Rule 6.87 Automatic Execution System

(a)-(i)—(No change.)

(j) Crossed or Locked Markets. *Except as provided herein*, [T]wo Floor Officials may approve an LMM's request to designate, for an option issue, that an order will default for manual representation in the trading crowd if the NBBO is crossed or locked. *Notwithstanding the forgoing, Linkage Orders subject to PCX Rule 6.93(e) will not default for manual representation if the NBBO is locked.*

(k)-(p)—(No change.)

#### Commentary

.01-.08—(No change.)

\* \* \* \* \*

### **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.

Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on November 24, 2003, the date PCX filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>3</sup> 15 U.S.C. 78f(b)(4).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 19b-4(f)(2).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

PCX Rule 6.87 (relating to Auto-Ex) permits eligible orders to be automatically executed in the event of a locked and crossed market. However, PCX Rule 6.87(j) provides that an LMM may seek the approval of two Floor Officials to allow an order to default to manual representation in the trading crowd if the National Best Bid or Offer ("NBBO") is crossed or locked. The rule allows this exception in order to protect against potential misuse of the Auto-Ex system by arbitrage firms who may lock or cross the market in order to game the Auto-Ex system.

The Exchange proposes to amend PCX Rule 6.87(j) to state that Linkage Orders subject to Exchange Rule 6.93(e) will not default for manual handling if the NBBO is locked. Thus, as proposed, when the market is locked, Linkage Orders will be automatically executed in accordance with PCX Rule 6.93(e) and the Exchange will not permit such orders to default for manual representation in the trading crowd.

The PCX represents that treating Linkage Orders as proposed in this filing is consistent with the practice of the other options exchanges. The Exchange further represents that the proposed rule will improve the national market system by improving Linkage execution rates for the PCX.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and 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 not impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change, as amended.

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

The foregoing rule change has been filed by the Exchange as a "non-controversial" rule pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>8</sup> Consequently, 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 thirty 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4 thereunder.<sup>10</sup>

The PCX has requested that the Commission waive the five-day pre-filing notice requirement and the thirty-day operative waiting period. The Commission has decided, consistent with the protection of investors and the public interest, to waive the five-day pre-filing requirement and the thirty-day operative waiting period since the proposed rule change, as amended, is consistent with the practice of the other options exchanges.<sup>11</sup> For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>12</sup>

At any time within sixty 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2003-65 and should be submitted by December 23, 2003.

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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**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster #3559]**

**Commonwealth of Puerto Rico**

As a result of the President's major disaster declaration on November 21, 2003, I find that the municipalities of Guanica, Guayama, Juana Diaz, Maunabo, Patillas, Rio Grande, Salinas, Santa Isabel and Yauco in the Commonwealth of Puerto Rico constitute a disaster area due to damages caused by severe storms, flooding, mudslides and landslides beginning on November 10, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 20, 2004, and for loans for economic injury until the close of business on August 23, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration,  
Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the following contiguous municipalities may be filed until the specified date at the above location: Adjuntas, Aibonito, Arroyo, Canovanas, Cayey, Ceiba, Coamo, Guayanilla, Jayuya, Lajas, Lares, Las Piedras, Loiza, Luquillo, Maricao, Naguabo, Orocovis, Ponce, Sabana Grande, San Lorenzo,

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</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.

<sup>11</sup> For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> See *supra* note 4.

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

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

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