

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51627; File No. SR-PCX-2005-27)

April 28, 2005

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Calculation of the National Best Bid or Offer When Another Exchange is Disconnected From the Intermarket Option Linkage

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 March 31, 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 prepared by the Exchange. On April 19, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ 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 Exchange is proposing to add Exchange Rule 6.94(e) to add provisions for declaring an away market unreliable when an away market is disconnected from the Intermarket Option Linkage (“Linkage”)⁴ and to relocate the current rule on declaring an away market unreliable to Exchange Rule 6.94(e). The text of the proposed rule change, as amended, is available on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4 dated April 19, 2005 (“Amendment No. 1”). Amendment No. 1 replaced and superseded the original filing in its entirety.

⁴ “Linkage” means the systems and data communications network that link electronically the Participants to one another for the purpose of sending and receiving Linkage Orders, related confirmations, order statuses and Administrative Messages. See Section 2(14) of the Plan for the Purpose of Creating and Operating and Intermarket Option Linkage.

Exchange's Web site (<http://www.pacificex.com>), at the principal office of the Exchange, and at the Commission 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 Exchange 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 purpose of the proposed rule change is to codify the Exchange's current policy on declaring an away market unreliable when an away market is disconnected from Linkage. Currently, the Exchange relies on Exchange Rule 6.87(h)(4) to determine whether an away market is unreliable.

In order to clarify the Exchange's practices for declaring an away market unreliable, the Exchange is proposing to add Exchange Rule 6.94(e). Proposed Exchange Rule 6.94(e) is substantially similar to current Exchange Rule 6.87(h)(4), except that proposed Exchange Rule 6.94(e) adds provisions relating to declaring an away market unreliable when such away market is disconnected from Linkage. Proposed Exchange Rule 6.94(e)(A)(iii) would codify the Exchange's policy to declare an away market unreliable if such away market is disconnected from Linkage. The Exchange believes that declaring an away market that has been disconnected

from Linkage unreliable is necessary to eliminate quotes from the National Best Bid or Offer (“NBBO”) calculation that are not readily available to PCX OTP Holders⁵ and OTP Firms.⁶ When the Exchange receives notice that an away market has been disconnected from Linkage, the senior person in charge of the Exchange Control Room will direct that the away market that has been disconnected from Linkage be declared unreliable and removed from the Exchange’s NBBO calculation until the sooner of the end of the trading day or the time that the quotes are confirmed by the Exchange to be reliable again. The Exchange believes that the described procedure for removing an away market from, or including an away market in, the Exchange’s NBBO calculation is appropriate and efficient because the Exchange receives electronic confirmation that an away market has been disconnected from or reconnected to Linkage.⁷ Receipt of this real time information, in conjunction with the proposed rule change, will allow the Exchange to disseminate the most accurate NBBO calculation to the PCX OTP Holders and OTP Firms.

The Exchange is also proposing to move the provisions for declaring an away market unreliable in Exchange Rule 6.87(h)(4) to proposed Exchange Rule 6.94 (Order Protection), because the Exchange believes Exchange Rule 6.94 is a more appropriate rule to address declaring an away market unreliable.

⁵ See Exchange Rule 1.1(q).

⁶ See Exchange Rule 1.1(r).

⁷ At the request of the Exchange, the Commission staff made a change to this sentence to clarify that the Exchange believes that the described procedures are appropriate and efficient for both removing an away market, as well as for including an away market, in the Exchange’s NBBO calculation. Telephone conversation between Steven Matlin, Senior Counsel, Exchange, and Kim Allen, Attorney, Division of Market Regulation, on April 22, 2005.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ in particular, because the proposed rule change is 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, and to remove impediments to and perfect the mechanism of a free and 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 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

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 Exchange consents, the Commission will:

- (A) by order approve the proposed rule change, or

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

- (B) institute proceedings to determine whether the proposed rule change 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 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-PCX-2005-27 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-2005-27. 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 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-PCX-2005-27 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

J. Lynn Taylor
Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).