

.10 Prior to disseminating any change in an indication of interest or superior indication of interest, or indicating that no change has occurred, pursuant to paragraph (a)(ii) of this Rule, the Basket Book Dealer may execute paired-off buy and sell basket orders at a price that a Floor Governor has approved.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49342; File No. SR-PCX-2004-09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Pacific Exchange, Inc. To Allow Ratio Orders to be Executed at the Exchange

March 1, 2004.

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 February 19, 2004, 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. 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

The Exchange is proposing amend its rules to allow ratio orders to be executed at the Exchange. The text of the proposed rule change is available at the 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, 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 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

PCX Rule 6.62 lists and defines several types of orders that are permissible at the PCX. Of the several types of orders defined, three are complex orders: spread, straddle and combination orders.³ The PCX proposes to add another type of complex order, ratio orders, to the list of orders included in Rule 6.62.⁴ A ratio order is either a spread, straddle, or combination order in which the stated number of option contracts to buy (sell) is not equal to the stated number of option contracts to sell (buy), provided that the number of contracts differs by a permissible ratio. Under the PCX proposal, a permissible ratio is any ratio that is equal to or greater than one to three (.333) or less than or equal to three to one (3.0). For example, a one to two (.5) ratio, a two to three (.667) ratio, or a two to one (2.0) ratio is permissible, whereas a one to four (.25) or four to one (4.0) ratio is not.

The PCX believes that ratio orders are merely slight variations on the types of complex orders currently permitted at the PCX. For this reason, the PCX believes that it is appropriate to treat ratio orders in a manner similar to the existing complex orders that currently permitted to trade at the PCX. Accordingly, the PCX proposes to have ratio orders within the permissible ratio follow the current priority rules under PCX Rule 6.75(h) Commentary .04.

Specifically, PCX Rule 6.75(h) Commentary .04 sets forth the proper trading procedures for combination, spread and straddle orders. Under the PCX proposal, ratio orders that are equal to or greater than one to three (.333) or less than or equal to three to one (3.0) will be treated the same as combination, spread and straddle orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,⁵ in general, and furthers the objectives of section 6(b)(5) of the Act,⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and

³ These types of orders are defined in PCX Rule 6.62(d), (g), and (h), respectively.

⁴ The proposed rule change is based on the rules of the Chicago Board Options Exchange, Inc., Rules 6.45 and 6.53.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

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

Written comments on the proposed rule change were neither solicited nor received.

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

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6)⁸ thereunder, because it (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 become operative for 30 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. 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. The PCX provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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. Comments may also be submitted electronically at the following

⁷ 15 U.S.C. 78(s)(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

¹ 15 U.S.C. 78s(b)(1).

² CFR 240.19b-4.

e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-PCX-2004-09. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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-2004-09 and should be submitted by March 29, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49340; File No. SR-PCX-2004-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. to Facilitate Listing and Trading of Options and FLEX Options of Fixed-Income Exchange-Traded Fund Shares

February 27, 2004.

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 January 30, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I and II below, which items have been prepared by PCX. On February 18, 2004, the PCX filed Amendment No. 1 to the

proposed rule change.³ The proposed rule change, as amended, has been filed by PCX under Rule 19b-4(f)(6) under the Act.⁴ 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 amend the definition of Exchange-Traded Fund Shares ("ETFs") in order to facilitate the listing and trading of options and FLEX options on fixed-income ETFs. Proposed new language is *italicized*; deleted language is in [brackets.]

* * * * *

Rule 3.6(a)-(c)—No change.
Commentary:

.01—.05—No change.
.06 Securities deemed appropriate for options trading shall include shares or other securities ("Exchange-Traded Fund Shares") that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as a national market security, and that represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities constituting or otherwise based on or representing an investment in an index or portfolio of securities, provided:

(a)
(i) The Exchange-Traded Fund Shares meet the criteria and guidelines for underlying securities set forth in Rule 3.6(a); or

(ii) The Exchange-Traded Fund Shares must be available for creation or redemption each business day in cash or in kind from the investment company at a price related to the net asset value. In addition, the investment company shall provide that fund shares may be created even though some or all of the securities needed to be deposited have not been received by the unit investment trust or the management investment company, provided the authorized creation participant has undertaken to deliver

³ Letter from Tania J.C. Blanford, Regulatory Policy, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 17, 2004. ("Amendment No. 1"). In Amendment No. 1, the PCX made technical corrections to the proposed rule change.

⁴ 17 CFR 240.19b-4(f)(6). For purposes of determining the effective date and calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on February 18, 2004, the date PCX filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

the shares as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the fund which underlies the option as described in the fund or unit trust prospectus; and

(b)
(i) Any non-U.S. component *securities (including fixed income)* [stocks] in the index or portfolio on which the Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;

(ii) *Securities (including fixed income)* [stocks] for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index; and

(iii) *Securities (including fixed income)* [stocks] for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index.

.07—No change.

* * * * *

Rule 6.1 (a)—No change.

(b) Definitions. The following terms as used in Rule 6 shall, unless the context otherwise indicates, have the meanings herein specified:

(1)—(31)—No change.

(32) Exchange-Traded Fund Share— For purposes of these Rules, the term Exchange-Traded Fund Share shall include Exchange-listed securities representing interests in open-end unit investment trusts or open-end management investment companies that hold securities (*including fixed income securities*) based on an index or a portfolio of securities.

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Rules 8.1—8.17 Reserved.

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Rule 8.100 (a)—Applicability. Rules 8.100 et seq. are applicable only to Flexible Exchange Options. Except to the extent that specific rules in this Section govern, or unless the context otherwise requires, the provisions of the Constitution and other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Rule 4.1, Flexible Exchange Options are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange.

[(1) Flexible Exchange Options on the following indexes are approved for trading on the Exchange:

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.