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 will also be available for inspection and copying at the principal office of the NYSE. 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–NYSE–2005–65 and should be submitted by November 25, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[48]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–22413 Filed 11–9–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52738; File No. SR–NYSE–2004–39]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Partial Amendment No. 1 To Amend Exchange Rule 431 (Margin Requirements)

November 4, 2005.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 12, 2004, the New York Stock Exchange, Inc. (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed rule change and on September 29, 2005, filed a partial amendment to its proposed rule change[4] 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 amendments to Rule 431 (Margin Requirements) that will recognize specific additional complex option spread strategies and set margin requirements commensurate with the risk of such spread strategies. These complex spread strategies are a combination of two or more basic option spreads that are already covered under Exchange Rule 431. In addition, the Exchange is proposing the elimination of the two-dollar standard exercise price interval limitation for listed options and certain terminology with respect to ''permitted offsets,'' as defined in its Rule.

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

On July 12, 2004, the Exchange filed with the Securities and Exchange Commission proposed rule change to Rule 431, filed as SR–NYSE–2004–39, that would recognize specific additional complex option spread strategies and set margin requirements commensurate with the risk of such spread strategies. The purpose of this filing is to amend SR–NYSE–2004–39.[5]

These complex spread strategies are a combination of two or more basic option spreads that are already covered under Exchange Rule 431. In addition, the Exchange is proposing the elimination of the two-dollar standard exercise price interval limitation for listed options and certain terminology with respect to ''permitted offsets'' as defined in Rule 431.

Background

Rule 431 prescribes minimum maintenance margin requirements for customer accounts held at members and member organizations. In April 1996, the Exchange established a Rule 431 Committee (the ''Committee'') to assess the adequacy of Rule 431 on an ongoing basis, review margin requirements, and make recommendations for change. The Exchange's Board of Directors has approved a number of proposed amendments resulting from the Committee's recommendations since it was established. Similarly, the Committee has recommended the proposed amendments discussed below. The proposed amendments described below have been developed in conjunction with the Chicago Board Options Exchange (''CBOE'').

Complex Option Spreads

The Exchange is proposing amendments to Rule 431 to recognize certain additional complex option spread strategies that are the net result of combining two or more spread strategies that are currently recognized in the Exchange's margin rules. The netting of contracts in option series common to each of the currently recognized spreads in an aggregation reduces it to the complex spread strategies noted below.

Basic option spreads can be paired in such ways that they offset each other in terms of risk. The total risk of the combined spreads is less than the sum of the risk of both spread positions if viewed as stand-alone strategies. The specific complex spread strategies listed below are structured using the same principles as, and are essentially expansions of, the advanced spreads currently allowed in Rule 431.

Currently, Rule 431 recognizes and prescribes margin requirements for advanced spread strategies known as the ''butterfly spread''[6] and the ''box

[48] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s et seq.

[3] 17 CFR 240.19b–4.

[4] SR–NYSE–204–39: Amendment No. 1. The NYSE, in coordination with the Chicago Board Options Exchange, Incorporated (''CBOE''), filed the partial amendment to conform the complex options spreads strategies to which its rule amendments apply to those of the CBOE.

[5] At the request of the NYSE, the Commission staff clarified that the Exchange filed a partial amendment. Telephone conversation between Al Lucks, Managing Director, Member Firm Regulation, NYSE, and Matthew Comstock, Branch Chief, Division of Market Regulation (''Division''), on November 4, 2005.

[6] NYSE Rule 431(f)(2)(C) defines a ''butterfly spread'' as an aggregation of positions in three series of either puts or calls all having the same underlying component or index, and time of expiration, and based on the same aggregate current underlying value, where the interval between the exercise price of each series is equal, which positions are structured as either: (A) A ''long butterfly spread'' in which two short options in the same series are offset by one long option with a higher exercise price and one long option with a lower exercise price of (B) a ''short butterfly spread'' in which two long options in the same series offset one short option with a higher exercise

Continued

spread.''[7] However, these option spreads are limited in scope. The Exchange's proposal seeks to expand upon the types of pairings that would qualify for butterfly spread and box spread treatment.

Exchange Rule 431(f)(2)(G)(i) recognizes ''calendar spreads,''[8] also known as ''time spreads,'' yet it is not identified as such. The Exchange proposes to define this term as ''the sale of one option and the simultaneous purchase of an option with a more distant expiration date, both specifying the same underlying component with the same exercise price where the long options do not expire before the short option with the longest term expiration'' in the definition section of the Rule (NYSE 431(f)(2)(C)) since some of the complex spreads it wants to recognize in this proposal will include this component of spread strategies.

To be eligible for the margin requirements set forth below, a complex spread must be consistent with one of the seven patterns specified below. The expiration months and the sequence of the exercise prices must correspond to the same pattern, and the intervals between the exercise prices must be equal.

Members and member organizations will be required to obtain initial and maintenance margin for the subject complex spreads, whether established outright or through netting, of not less than the sum of the margin required on each basic spread in the equivalent aggregation.

The basic requirements are as follows: (a) The complex spreads must be carried in a margin account; (b) European-style[9] options are prohibited for complex spread combinations having a long option series that expires after the other option series (that is, those that involve a time spread such as items 5, 6 and 7 below.) Only American-style[10] options may be used in these combinations. Additionally, the intervals between exercise prices must be equal, and each complex spread must comprise four option series, with the exception of item 4 below, which must comprise three option series.

The sum of the margin required on each currently recognized spread in each of the applicable aggregations renders a margin requirement for the subject complex spread strategies as stated below. The additional complex option strategies and maintenance margin requirements are as follows:

(1) A Long Condor Spread is comprised of two long Butterfly Spreads. The proposal requires initial and maintenance margin of full cash payment of the net debit incurred when this spread strategy is established. Full payment of the net debit incurred will cover any potential risk to the carrying broker-dealer.

(2) A Short Iron Butterfly Spread is comprised of one long Butterfly Spread and one short Box Spread. The establishment of a long Butterfly Spread results in a margin requirement equal to the net debit incurred. The establishment of a short Box Spread requires margin equal to the aggregate difference between the exercise prices. The net proceeds from the sale of short option components may be applied to the margin requirement. Accordingly, to cover the risk to the carrying broker-dealer, the proposal requires a deposit of the aggregate exercise price differential. The net credit received may be applied to the deposit required.

(3) A Short Iron Condor Spread is comprised of two long Butterfly Spreads and one short Box Spread. The establishment of long Butterfly Spreads results in a margin requirement equal to the net debit incurred. The establishment of a short Box Spread requires margin equal to the difference in the strike price. Accordingly, to cover the risk to the carrying broker-dealer, the proposal requires a deposit of the aggregate exercise price differential. The net credit received may be applied to the deposit required.

(4) A Long Calendar Butterfly Spread is comprised of one long Calendar Spread and one long Butterfly Spread. The proposal requires initial and maintenance margin of full cash payment of the net debit incurred when this spread strategy is established. Full payment of the net debit incurred will cover any potential risk to the carrying broker-dealer.

(5) A Long Calendar Condor Spread is comprised of one long Calendar Spread and two long Butterfly Spreads. The proposal requires initial and maintenance margin of full cash payment of the net debit incurred when this spread strategy is established. Full payment of the net debit incurred will cover any potential risk to the carrying broker-dealer.

(6) A Short Calendar Iron Butterfly Spread is comprised of one long Calendar Spread plus one long Butterfly Spread and one short Box Spread. To cover the risk to the carrying broker-dealer, the proposal requires a deposit of the aggregate exercise price differential. The net credit received may be applied to the deposit required.

(7) A Short Calendar Iron Condor Spread is comprised of one Long Calendar Spread plus two long Butterfly Spreads and one short Box Spread. To cover the risk to the carrying broker-dealer, the proposal requires a deposit of the aggregate exercise price differential. The net credit received may be applied to the deposit required.

The purpose and benefit is to set levels of margin that more precisely represent the actual net risk of the option positions in the account and to enable customers to implement these strategies more efficiently.

Permitted Offsets

Currently, Exchange Rule 431(f)(2)(J) limits permitted offsets[11] for specialists and market makers in options to option series that are ''in-or-at-the-money.''[12] Recently, various options exchanges have provided for the listing of options with one-dollar strike intervals in a number of classes. As a result, the use

price and one short option with a lower exercise price.

7 NYSE Rule 431(f)(2)(C) defines a ''box spread'' as an aggregation of positions in a long call and short put with the same exercise price (''buy side'') coupled with a long put and short call with the same exercise price (''sell side'') all of which have the same underlying component or index and time of expiration, and are based on the same aggregate current underlying value, and are structured as: (A) A ''long box spread'' in which the sell side exercise price exceeds the buy side exercise price or, (B) a ''short box spread'' in which the buy side exercise price exceeds the sell side exercise price.

8 NYSE Rule 431(f)(2)(G)(i) states: Where a call that is issued by a registered clearing agency is carried ''long'' for a customer's account and the account is also ''short'' a call issued by a registered clearing agency, expiring on or before the date of expiration of the ''long'' listed call and specifying the same underlying component, the margin required on the ''short'' call shall be the lower of (1) the margin required pursuant to (f)(2)(D)(i) or (2) the amount, if any, by which the exercise price of the ''long'' call exceeds the exercise price of the ''short'' call. Where a put that is issued by a registered clearing agency is carried ''long'' for a customer's account and the account is also ''short'' a put issued by a registered clearing agency, expiring on or before the date of expiration of the ''long'' listed put and specifying the same underlying component, the margin required on the ''short'' put shall be the lower of (1) the margin required pursuant to (f)(2)(D)(i) or (2) the amount, if any, by which the exercise price of the ''short'' put exceeds the exercise price of the ''long'' put.

9 A European-style option is an option contract that can be exercised only on its expiration date.

10 An American-style option is an option contract that can be exercised at any time between the date of purchase and its expiration date.

11 NYSE Rule 431(f)(2)(J) defines a permitted offset position as, in the case of an option in which a specialist makes a market, a position in the underlying asset or other related assets, and in the case of other securities in which a specialist makes a market, a position in options overlying the securities in which a specialist makes a market.

12 NYSE Rule 431(f)(2)(J) defines the term ''in or at the money'' as the current market price of the underlying security is not more than two standard exercise intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.

of securities to hedge option series that have one-dollar strike intervals has unintentionally become more restrictive.

The proposed rule change will remove the two-dollar standard exercise price interval limitation for listed options and the definition of ''in-or-at-the-money.'' As proposed, Rule 431(f)(2)(J) would require permitted offset transactions be effected for specialist or market-making purposes such as hedging, risk reduction, rebalancing of positions, liquidation, or accommodation of customer orders, or other similar specialist or market-making purposes, while prohibiting trading in an underlying security that is not related to specialist or market making option activities, or that does not constitute a reasonable hedge.

Since clearing firms have risk monitoring systems that alert them to unhedged positions and haircut requirements pursuant to Rule 15c3–1[13] of the Exchange Act [14] perform a similar function as NYSE margin requirements relative to providing adequate risk coverage to broker-dealers, the Exchange believes that the elimination of the two-dollar standard exercise price limitation and definition of ''in-or-at-the-money'' will not diminish the ''safety and soundness'' protections that Rule 431 provides.

2. Statutory Basis

The basis for the proposed rule change is the requirement under section 6(b)(5) [15] of the Exchange Act that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, section 6(b)(5) of the Exchange Act requires the rules of an exchange to foster cooperation and coordination with persons engaged in regulating transactions in securities.

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 Exchange 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 reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change, or

(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, 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.* Please include File Number SR–NYSE–2004–39 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2004–39. 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 Section, 100 F Street, NE., Washington, DC 20549. 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–NYSE–2004–39 and should be submitted on or before December 1, 2005.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 05–22454 Filed 11–9–05; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 240.15c3–1.

[14] 15 U.S.C. 78a.

[15] 15 U.S.C. 78f(b)(5).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52719; File No. SR–PCX–2005–73]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Establishment of a Portfolio Crossing Service on the Archipelago Exchange

November 2, 2005.

I. Introduction

On June 7, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish an after-hours Portfolio Crossing Service (''PCS''). The PCX filed Amendment No. 1 to the proposed rule change on September 14, 2005.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on September 28, 2005.[4] The Commission received no comments from the public in response to the proposed rule change. This order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 52472 (September 20, 2005), 70 FR 56762.