

Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ which requires, among other things, that the rules of an exchange be 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, 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 clarifying and improving the Market Order Auction pricing mechanism on ArcaEx should provide investors with a clearer understanding of how orders will be priced at the open and may provide greater assurance that orders will be priced at prices that are substantially close to where the stock is trading.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-PCX-2005-58), as amended, be hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52366; File No. SR-PCX-2005-101]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Pilot Program Applicable to Option Strategy Executions until March 1, 2006

August 31, 2005.

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 August 25, 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

impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

prepared by PCX. The Exchange designated the proposed rule change as establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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

PCX proposes to amend its Schedule of Fees and Charges in order to extend the pilot program ("Pilot Program") that applies to Option Strategy Executions until March 1, 2006. The text of the proposed rule change is available on the Exchange's Web site (<http://www.pacificex.com>), at the Office of the Secretary, 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, 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. 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

The purpose of this proposed rule change is to extend the Pilot Program that applies to Option Strategy Executions until March 1, 2006.⁵ The transactions included as part of the Pilot Program include reversals and

³ 15 U.S.C. 78s(b)(3)(A)(ii)

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Securities Exchange Act Release Nos. 51645 (May 2, 2005), 70 FR 24458 (May 9, 2005) (SR-PCX-2005-47) (establishing pilot program for reversals and conversions, dividend spreads, and box spreads until September 1, 2005) and 51787 (June 6, 2005), 70 FR 34174 (June 13, 2005) (SR-PCX-2005-65) (establishing pilot program for short stock interest spreads and merger spreads until September 1, 2005).

conversions,⁶ dividend spreads,⁷ box spreads,⁸ short stock interest spreads,⁹ and merger spreads.¹⁰ Because the referenced Options Strategy Transactions are generally executed by professionals whose profit margins are generally narrow, the Pilot Program caps the transaction fees associated with such executions at \$1,000 per strategy executed on the same trading day in the same option class. In addition, there is also a monthly cap of \$50,000 per initiating firm for all strategy executions. The Exchange believes that by keeping fees low, the Exchange will be able to attract liquidity by accommodating these transactions. Extending the Pilot Program until March 1, 2006 will allow the Exchange to keep these fees low and thus continue to attract liquidity.

OTP Holders and OTP Firms who wish to benefit from the fee cap will be required to submit to the Exchange forms with supporting documentation (e.g., clearing firm transaction data) to qualify for the cap.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,¹¹ in general, and Section 6(b)(4) of the Act,¹² in particular, in that it provides for the equitable allocation of dues, fees, and other charges among its members.

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

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁶ Reversals and conversions are transactions that employ calls, puts and the underlying stock to lock in a nearly risk free profit. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration.

⁷ Dividend spreads are trades involving deep in the money options that exploit pricing differences arising around the time a stock goes ex-dividend.

⁸ Box spreads is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively.

⁹ A short stock interest spread is a spread that uses two deep in the money put options of the same class followed by the exercise of the resulting long position in order to establish a short stock interest arbitrage position.

¹⁰ A merger spread is a transaction executed pursuant to a strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices followed by the exercise of the resulting long option position.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

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 rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and paragraph (f)(2) of Rule 19b-4 thereunder¹⁴ because it is establishing or changing a due, fee, or other charge applicable only to the Exchange's members. 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.

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-2005-101 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-PCX-2005-101. 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 such 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-2005-101 and should be submitted on or before September 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52371; File No. SR-PCX-2005-68]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Modify Rate Schedule Retroactively To January 1, 2002 To Cap the Fees on Multiple Options Issues Transfers

August 31, 2005.

On May 13, 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 modify its rate schedule retroactively to January 1, 2002 to cap the fees on multiple options issues transfers. The Exchange amended the proposal on July 1, 2005.³ The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on July 27, 2005.⁴ The Commission did not receive comments

on the proposal. This order approves the proposed rule change, as amended.

PCX proposes to cap the fees on multiple options issues transfers. Currently, PCX charges a Lead Market Maker ("LMM") that has been allocated an options issue \$1,000 per issue if the LMM transfers the options issue to another LMM.⁵ PCX originally adopted the fee to help offset its administrative and technological costs related to transferring an options issue. While PCX believes it is still accurate to charge \$1,000 for the transfer of one issue, when multiple issues are transferred as part of a single transaction, the overall costs of PCX associated with the transfer may be reduced. When multiple issues are transferred as part of a single transaction, PCX believes that charging the full \$1,000 on every transferred issue with no limit to the total charges is not the original intent of the transfer fee.

PCX proposes to continue charging \$1,000 per issue transferred, but cap the fee at \$15,000 for the first one hundred issues transferred, and \$5,000 for every one hundred (or any part of) additional issues transferred. To qualify for the rate cap, all transfers must be deemed to be part of a single transaction and meet the PCX Transfer of Issues Guidelines. The new fee cap would allow PCX to more accurately assess an LMM the technological and administrative costs associated with the transfer of allocated issues. PCX proposes to make this fee effective retroactively to January 1, 2002, the date the transfer fee was first effective, so that it would have the ability to make any adjustments it deems necessary to allow previous charges to properly reflect the true intent of the transfer fee. Further, PCX represented that it would review all past transfers to determine if any adjustments are warranted pursuant to the proposed rate schedule.

After careful review of the proposed rule change, as amended, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ Specifically, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ in that it provides for the equitable

⁵ According to PCX, options issue transfers are conducted in accordance with PCX Transfer of Issues Guidelines. See PCX Regulatory Information Bulletin RBO-03-09 (August 11, 2003).

⁶ In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(4).

¹⁵ CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original proposal.

⁴ See Securities Exchange Act Release No. 52090 (July 20, 2005), 70 FR 43492.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).