

exchange⁷ and, in particular, the requirements of Section 6(b)(5) of the Act.⁸ Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposed rule change creates an additional processing capability for PNP Orders designated as PNP Plus. While an ordinary PNP Order is automatically cancelled in the event that such order locks or crosses the national best bid or offer ("NBBO"), a PNP Plus designation would avoid such cancellation in the event that the PNP Order would lock or cross the NBBO by re-pricing the PNP Order by one penny greater than the national best bid (for sell orders) or one penny lower than the national best offer (for buy orders) and posting the re-priced PNP Order in the ArcaEx Book. With each subsequent change in the NBBO, the PNP Order would continue to be re-priced and re-posted in this manner until such time that the original PNP Order price would not lock or cross the NBBO, at which time the PNP Order would revert to its original price. The Commission notes that such order would be assigned a new price time priority as of the time of each re-posting in the ArcaEx Book. The Commission believes that the PNP Plus designation should extend additional flexibility to PNP Orders and that it should provide ETP Holders and Sponsored Participants with enhanced trading options. Further, the Commission believes that the proposed rule change should help improve the efficiency of order interaction on ArcaEx by increasing the opportunity for PNP Orders to execute, while avoiding locked and crossed markets. Therefore, the Commission finds that the proposed rule change, as amended, is consistent with the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-PCX-2004-

12), as amended by Amendment Nos. 1, 2, and 3, be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49949; File No. SR-PCX-2004-55]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a Twelve-Month Extension of the Automatic Execution System Book Function Pilot Program

June 30, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on June 28, 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 and II below, which Items have been prepared by PCX. PCX filed the proposed rule change as "non-controversial" pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6)⁴ thereunder. 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 is proposing to amend its rules to extend the Automatic Execution System ("Auto-Ex") Book Function Pilot Program for one year until June 30, 2005. The text of the proposed rule change is available at 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

On June 22, 2001, the Commission approved, on a one-year pilot basis, the Exchange's proposal to amend PCX Rule 6.87, which allows automatic executions of orders in the Exchange's Limit Order Book when those orders become marketable.⁵ On June 17, 2002, the Commission approved a one-year extension of the pilot program.⁶ On June 17, 2003, the Commission approved a one-year extension of the pilot program.⁷ The pilot program is currently set to expire on June 30, 2004.

The Auto-Ex⁸ Book Function of the Pacific Options Exchange Trading System ("POETS") permits orders in the Limit Order Book to be executed via the Auto-Ex system when those orders become marketable subject to certain procedures. The function may be used when one or more orders in the Limit Order Book become marketable, as indicated by a locked or crossed market being displayed on the trading floor. When this occurs, the Lead Market Maker may direct the Order Book Official to initiate the Auto-Ex Book Function, which will cause marketable orders in the Limit Order Book to be automatically executed against the accounts of Market Makers who are participating on the Auto-Ex system at the time.

The Exchange is requesting an additional extension of the pilot program for one year from June 30, 2004 through June 30, 2005. The Exchange represents that the added time permits the Exchange to phase-in the Exchange's new trading platform for options, "PCX

⁵ See Exchange Act Release No. 44468 (June 22, 2001), 66 FR 34505 (June 28, 2001).

⁶ See Exchange Act Release No. 46082 (June 17, 2002), 67 FR 42307 (June 21, 2002).

⁷ See Exchange Act Release No. 48043 (June 17, 2003), 68 FR 37190 (June 23, 2003).

⁸ Auto-Ex is the Exchange's Automated Execution system feature of POETS for market or marketable limit orders. POETS is the Exchange's automated trading system comprised of an options order routing system, an automatic execution system ("Auto-Ex"), an on-line limit order book system and an automatic market quote update system. Option orders can be sent to POETS via the Exchange's Member Firm Interface ("MFI"). Market and marketable limit orders sent through the MFI will be executed by Auto-Ex if they meet order type and size requirements of the Exchange.

⁷ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 217 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

Plus," on an issue-by-issue basis.⁹ As each issue is phased into PCX Plus, the Exchange will simultaneously phase-out such issue from the Auto-Ex Book Function. PCX Plus will eventually replace the Auto-Ex Book Function in its entirety. Currently, the Auto-Ex Book Function is operating as intended and provides a service to both customers and members by facilitating the execution of orders in the Limit Order Book. Therefore, the Exchange believes that a one-year extension of the program is warranted.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to 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 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 Exchange has designated the proposed rule change as one that does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)¹³ thereunder.

Under Rule 19b-4(f)(6)(iii), a proposed "non-controversial" rule

change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time. PCX has requested that the Commission waive the five business day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing, and the PCX Auto-Ex Book Function Pilot Program can continue without interruption.

The Commission believes that waiver of the five-day pre-filing requirement and the 30-day operative delay is consistent with the protection of investors and the public interest.¹⁴ The Commission notes that the Auto-Ex Book Function Pilot Program expires on June 30, 2004. Accelerating the operative date will allow for the continued operation of PCX's Auto-Ex Book Function Pilot Program without interruption until such time as PCX Plus is fully operative. Therefore, the Commission designates the proposed rule change to be effective and operative immediately.

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.¹⁵

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-2004-55 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-2004-55. 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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PCX. 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-2004-55 and should be submitted on or before July 28, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49948; File No. SR-PCX-2004-54]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a Twelve-Month Extension of the Automatic Execution System Incentive Pilot Program

June 30, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on June 28, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission

⁹ See Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (Order approving PCX Plus).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78s(b)(3)(C).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 217 CFR 240.19b-4.