

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52070; File No. SR-PCX-2005-61)

July 20, 2005

Self-Regulatory Organizations; The Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, Establishing a De Minimis Exception to the 80/20 Test

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 26, 2005, the Pacific Exchange, Inc. ("Exchange" or "PCX") 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 PCX. On June 29, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 proposes to modify the "80/20 Test" in determining limitations on Principal Order access under the rules imposed by the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan")<sup>4</sup> and related rules.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No.1 added clarifying language to the proposed rule text.

<sup>4</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Inc. and the International Securities Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, the Philadelphia Stock Exchange, Inc., the PCX, and the Boston Stock Exchange, Inc. joined the Linkage Plan. See Securities

The text of the proposed rule change, as amended, is available on the PCX's website at <http://www.pacificex.com>, the PCX's Office of the Secretary, and at the Commission's 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 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 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 this proposed rule change, as amended, is to implement proposed Joint Amendment No. 17 to the Linkage Plan. Joint Amendment No. 17, together with this proposed rule change, will modify the so called "80/20 Test" set forth in Section 8(b)(iii) of the Linkage Plan and PCX Rule 6.96. PCX Rule 6.96 states that Market Makers should send Principal Orders through Linkage on a limited basis and not as a primary aspect of their business.<sup>5</sup> The 80/20 Test implements this general principle by prohibiting a Market Maker from sending Principal Orders in an eligible option class if, in the last calendar quarter, the Market Maker's Principal Order contract volume is

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Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>5</sup> The Exchange defines a Principal Order as an order for a principal account of an eligible Market Maker that does not relate to a customer order the Market Maker is holding. See PCX Rule 6.92(a)(12)(ii).

disproportionate to the Market Maker's contract volume executed against customer orders in its own market.

The Exchange believes that applying the 80/20 Test has resulted in anomalies for Market Makers with limited volume in an eligible option class. Specifically, if a Market Maker has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the Market Maker failing to meet the Test. This would bar the Market Maker from using the Linkage to send Principal Orders in that option class for the following calendar quarter. It was not the intent of the Exchange to bar Market Makers with limited volume from sending Principal Order through the Linkage in these circumstances since such trading was not "a primary aspect of their business." Thus, the proposed rule would create a de minimus exemption from the 80/20 Test for Market Makers that have total contract volume of less than 1000 contracts in an option class for a calendar quarter.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general and furthers the objectives of Section 6(b)(5)<sup>7</sup> in particular because it 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.

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

The PCX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to 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 such 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 at <http://www.sec.gov/rules/sro.shtml> or send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov).

Please include File No. SR-PCX-2005-61 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 No. SR-PCX-2005-61. 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 Website (<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, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2005-61 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).