

## 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

The purpose of the proposed rule change is to amend Exchange Rule 22(b) to codify the Exchange's interpretation of the circumstances under which Board and committee members and other persons are obligated to disqualify themselves from participating in the consideration of matters in which they have a personal interest.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)<sup>3</sup> of the Act in that it promotes just and equitable principles of trade by insuring that Board and committee members and other persons are not participating in matters in which they have a personal interest.

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

The Exchange believes that 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.

### 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 reasons for so finding or (ii) as to which the self-regulatory organization 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 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. 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 NYSE. All submissions should refer to File No. SR-NYSE-99-32 and should be submitted by October 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41867; File No. SR-PCX-99-18]

September 13, 1999.

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Facilitation Crosses.

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 June 4,

<sup>4</sup> 17 CFR 200.30-3(a)(12).

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

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

1999, 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, II, and III below, which Items have been prepared by the PCX. 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 PCX proposes to amend PCX Rule 6.47(b), governing Facilitation Crosses, to provide firms with a guaranteed percentage of cross trades when a firm holds an order for a public customer or a broker-dealer ("customer order") and an order for the proprietary account of a member organization ("facilitation order") that is representing that customer. The text of the proposed rule change follows. Additions are italicized and deletions are bracketed.

### ¶4987 "Crossing Orders"

Rule 6.47 Non-Facilitation (Regular Way) Crosses

(a) No change.

Facilitation Crosses

(b) A Floor Broker who holds an order for a public customer [of a member organization] or a broker-dealer ("customer order") and an [facilitation] order for the proprietary account of a member organization that is representing that customer (the "facilitation order") may cross those [such] orders [provided that he proceeds in the following manner.] *only if the following procedures and requirements are followed:*

(1) *The size of the customer order subject to facilitation must be at least two hundred (200) contracts.*

(2) [(1)] The option order tickets for [of] both the facilitation order and the [public] customer order [subject to facilitation] must display all of the terms of such orders, including any [contingency] *contingencies* involving, and all related transactions in, either options or underlying or related securities. *The Floor Broker must disclose all securities that are components of the customer order.*

[(2)] The Floor Broker shall disclose all securities which are components of the order subject to facilitation and then shall request bids and offers for the execution of all components of the order, making all persons in the trading crowd, including the Order book Official, aware of his request for a market.]

[(3)] After providing an adequate opportunity for such bids and offers to be made, the Floor Broker must, on behalf of the public customer whose order is subject to facilitation, either bid above the highest bid in the market or offer below the lowest offer in the market, identify the order as being subject to facilitation, and disclose all terms and conditions of such order. After all other market participants are given an opportunity

<sup>3</sup> 15 U.S.C. 78f(b)(5).

to accept the bid or offer made on behalf of the public customer whose order is subject to facilitation, the Floor Broker may cross all or any remaining part of such order and the facilitation order at such customer's bid or offer by announcing in public outcry that he is crossing and by stating the quantity and price(s). Once such bid or offer has been made, the order subject to facilitation has precedence over any other bid or offer in the crowd at the same price, to trade immediately with the facilitation order. The order subject to facilitation may not be blocked by revised bids or offers; however, the bid or offer of the order subject to facilitation may be accepted or improved by members in the trading crowd or orders represented in the trading crowd.]

(3) *The Floor Broker must request bids and offers for all components of the orders and clearly disclose his intention to execute a facilitation cross transaction to the trading crowd. Once the trading crowd has provided a quote, it will remain in effect until: (A) a reasonable amount of time has passed, or (B) there is a significant change in the price of the underlying security, or (C) the facilitation market has been improved. (The term "significant change" will be interpreted on a case-by-case basis by two Floor Officials based upon the extent of recent trading in the option and in the underlying security, and any other relevant factors.)*

(4) *Once a market has been established and all customer orders represented in the trading crowd have been satisfied, the Floor Broker may cross:*

(A) *fifty percent (50%) of any remaining contracts at a price between the trading crowd's quoted market (e.g., if the trading crowd's quoted market is 2 $\frac{1}{8}$ -2 $\frac{1}{2}$ , and the Floor Broker is representing a customer order to buy 1000 contracts, then the Floor Broker may cross 50% of 1000 at 2 $\frac{1}{4}$  or any other improved price); or*

(B) *twenty-five (25%) of the contracts at the trading crowd's best bid or offer (e.g., if the trading crowd's quoted market size is 500x500, and the Floor Broker is representing a customer order to buy 1000 contracts, then the Floor Broker may cross 25% of 1000 at the trading crowd's best bid or offer).*

(5) *If the facilitation trade occurs at the LMM's quoted bid or offer in their allocated issue, then the LMM's guaranteed participation level shall apply only to the number of contracts remaining after all customer orders and the firm facilitation order being represented by the Floor Broker have been satisfied pursuant to this rule. If the trade occurs at a price other than the LMM's quoted bid or offer, the LMM is entitled to no guaranteed participation.*

(6) *The members of the trading crowd who established the facilitation market will have priority over all other orders that were not represented in the trading crowd at the time that the facilitation market was established and will maintain priority over non-customer orders unless the facilitation quote is improved. A Floor Broker who is holding a customer order and a facilitation order and who calls for a facilitation market will be deemed to be representing both the customer order and the facilitation order, so that the customer order and the facilitation order will*

*also have priority over all other orders that were not being represented in the trading crowd at the time that the facilitation market was established.*

#### Crossing of Solicited Orders

(c) No Change.

Commentary .01-.06 No Change.

## 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

**Background.** Currently, PCX Rule 6.47(b) does not guarantee a firm any cross trades when that firm holds an order for a public customer and a facilitation order for the proprietary account of a member organization that is representing that customer order. The rule states that a Floor Broker holding an order for a public customer and a facilitation order may cross such orders provided he discloses all securities that are components of the order subject to facilitation; requests bids and offers for the execution of all components of the order; and makes all persons in the trading crowd, including the Order Book Official, aware of his request for a market. After providing an adequate opportunity for such bids and offers to be made, the Floor Broker must then identify the order as being subject to facilitation, and disclose all terms and conditions of such order. After all other market participants are given an opportunity to accept the bid or offer made on behalf of the public customer whose order is subject to facilitation, the Floor Broker may cross all or any remaining part (whatever maybe left after the trading crowd has had an opportunity to trade) of such order and the facilitation order at such customer's bid or offer by announcing in public outcry that he is crossing and by stating the quantity and price(s). The current rule does not guarantee the Floor Broker who brings the customer order to the trading floor any part of the cross trades.

**Proposal.** The PCX proposes to change PCX Rule 6.47(b), governing facilitation crosses, to provide firms with a guaranteed percentage of cross trades when a firm holds a customer order and a facilitation order. Specifically, for customer orders of at least 200 contracts, the PCX proposes that a Floor Broker representing the orders must disclose all securities that are components of the customer order and must display all of the terms of such orders on the option order tickets for both the customer order and the facilitation order (including any contingencies involving, and all related transactions in, either options or underlying or related securities). The PCX further proposes that the Floor Broker must also request bids and offers for all components of the orders and clearly disclose his intention to execute a facilitation cross transaction to the trading crowd.<sup>3</sup>

The PCX proposes that, once a market has been established and all customer orders represented in the trading crowd have been satisfied, the Floor Broker may cross fifty percent (50%) of any remaining contracts at a price between the trading crowd's quoted market, or twenty-five percent (25%) of the contracts at the trading crowd's best bid or offer.

In addition, the PCX proposes that if the facilitation trade occurs at the LMM's quoted bid or offer in its allocated issue, then the LMM's guaranteed participation level shall apply only to the number of contracts remaining after all customer orders and the firm facilitation order being represented by the Floor Broker have been satisfied pursuant to PCX Rule 6.47(b). If the trade occurs at a price other than the LMM's quoted bid or offer, the LMM is entitled to no guaranteed participation.

Finally, with regard to priority of orders, the PCX proposes that the members of the trading crowd who established the facilitation market will have priority over all other orders that were not represented in the trading crowd at the time that the facilitation market was established and will maintain priority over non-customer orders unless the facilitation quote is

<sup>3</sup> Proposed subsection (b)(3) states that once the trading crowd has provided a quote, it will remain in effect until: (A) A reasonable amount of time has passed or (B) there is a significant change in the price of the underlying security or (C) the facilitation market has been improved. (The term "significant change" will be interpreted on a case-by-case basis by two Floor Officials based upon the extent of recent trading in the option and in the underlying security, and any other relevant factors.)

improved. Furthermore, the PCX proposes that a Floor Broker who is holding a customer order and a facilitation order who calls for a facilitation market will be deemed to be representing both the customer order and the facilitation order, so that the customer order and the facilitation order will also have priority over all other orders that were not being represented in the trading crowd at the time that the facilitation market was established.

The Exchange believes that the effect of this rule change will be to provide Market Makers with an additional incentive to quote tighter markets in response to a request for quotes and at the same time encourage member firms to bring their order flow to the PCX options floor. In addition, the Exchange believes that the rule change will provide Floor Brokers with an additional incentive to trade between the quoted bid and ask, thereby passing on the benefits of additional price discovery to customers.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) <sup>4</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5) <sup>5</sup> in particular, become it is designed 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 and perfect the mechanisms of a free and open market and a national market system 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

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 self-regulatory organization 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 proposal is consistent with the Act. In particular, the Commission seeks comment on whether the proposed rule change will result in fair executions for the various orders and parties represented in the crossing transaction.<sup>6</sup> Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549-0609. 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 will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-99-18 and should be submitted by October 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41868; File No. SR-PCX-99-25]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. To Allow Lead Market Makers To Perform Certain Floor Broker Functions

September 13, 1999.

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 July 13, 1999, 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 PCX proposes to modify its Lead Market Maker ("LMM") rules to allow an LMM to perform certain Floor Broker functions. The text of the proposed rule change is set forth below. Additions are italicized and deletions are bracketed.

Pacific Exchange, Inc.

#### Rule 6.82

(a)-(g)—No Change.

(h) LMM Performance of Order Book Official, [and] Market Maker *and Floor Broker Functions.*

(1) LMM Performance of Order Book Official Functions.

(a)-(e)—No Change.

(2) LMM Performance of Market Maker Function.

(a)—No Change.

(3) *LMM Performance of Floor Broker Function.*

*(a) LMMs may function in designated option issues as both Market Maker and Floor Broker, and as such, will be exempt from Rule 6.38. In acting as Floor Brokers, LMMs must fulfill their obligation to use due diligence and all other obligations of Floor Brokers pursuant to Rules 6.43 through 6.48.*

*(b) LMMs may (but are not obligated to) accept non-discretionary orders that are not eligible to be placed in the Public Order Book, and LMMs may represent such orders as Floor Brokers. An LMM may not represent discretionary orders, whether as a Floor*

<sup>4</sup> 15 U.S.C. 78f(b).

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

<sup>6</sup> The PCX has also filed a proposed rule change concerning "cross-only" contingency orders (SR-PCX-99-31).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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