

without being delisted. During this period, CBOE states that its staff is continually monitoring the status of the issuers' compliance with reporting obligations to determine whether the security may be delisted.<sup>7</sup> Finally, the listing exchange or Nasdaq typically issue a press release well in advance of any delisting to give investors and other market participants ample notice.<sup>8</sup>

Given the availability of information relating to public issuers of securities in today's markets, and in light of additional continued listing standards under Rule 5.4, the Exchange maintains that the appropriate point at which to restrict the issuance of new options series in an options class is when the security is delisted. Therefore, the Exchange proposes to eliminate Interpretation .01(e).

Finally, as a matter of "housekeeping," the Exchange also proposes to clarify Exchange Rule 5.3(a)(1) and Interpretation .01(f), which govern the criteria for the initial and continued listing of options on a particular security. Both of these provisions include a requirement that the underlying security must be a national market system security ("NMS security"). As part of the recently adopted Regulation NMS, among other things, the Commission revised the definition of an "NMS security."<sup>9</sup> Specifically, Rule 600(b)(46) under Regulation NMS defines an NMS security as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." Rule 600(b)(47) also defines an "NMS stock" as any NMS security other than an option. As such, Exchange Rule 5.3(a)(1) and Interpretation .01(f) will be amended to reflect these new terms.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers

<sup>7</sup> Additionally, if the underlying security has been halted or suspended in the primary market, then the Exchange may halt trading in the option class pursuant to CBOE Rule 6.3(a) and shall halt such trading pursuant to CBOE Rule 6.3B. Telephone conversation between Jim Flynn, Attorney, CBOE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, October 3, 2005.

<sup>8</sup> The Commission posts delisting notices (or orders) on its Web site. See <http://www.sec.gov/rules/delist.shtml>.

<sup>9</sup> See Securities Exchange Act Release No. 34-51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>10</sup> 15 U.S.C. 78f(b).

the objectives of Section 6(b)(5) of the Act<sup>11</sup> in particular, in that the proposed rule change will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

This proposed rule change does 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

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 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2004-37 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-CBOE-2004-37. 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 CBOE. 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-CBOE-2004-37 and should be submitted by November 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52556; File No. SR-CHX-2005-20]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Participant Fees and Credits

October 4, 2005.

On July 17, 2005, the Chicago Stock Exchange, Inc. ("CHX") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend its Participant Fee Schedule to eliminate, retroactive to January 1, 2005, the assignment fees for listed securities that were assigned to a specialist when

<sup>12</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.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

other firms were not competing for the assignment. Such assignment fees have already been eliminated for securities assigned on or after May 2, 2005.<sup>3</sup> The proposed rule change would eliminate such fees for assignments made during the period from January 1, 2005 through May 1, 2005, thus eliminating assignment fees for securities assigned without competition for all of 2005.<sup>4</sup>

The proposed rule change was published for comment in the **Federal Register** on August 9, 2005.<sup>5</sup> The Commission received no comments on the proposal.

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<sup>6</sup> and, in particular, the requirements of section 6 of the Act.<sup>7</sup> The Commission finds specifically that the proposed rule change is consistent with section 6(b)(4) of the Act<sup>8</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. The Commission notes that assignment fees for securities assigned without competition have already been eliminated for all such assignments effective on or after May 2, 2005. The Commission further notes that the elimination of the assignment fee on a retroactive basis would be for the period January 1, 2005 through May 1, 2005. Thus, the elimination of this fee would be applied evenhandedly during the current year. Therefore, the Commission believes that the proposed rule change is consistent with the Act.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-CHX-2005-20) be, and it hereby is approved.

<sup>3</sup> See Securities Exchange Act Release No. 51763 (May 31, 2005), 70 FR 33230 (June 7, 2005).

<sup>4</sup> CHX has represented that these assignment fees have already been assessed and paid, and thus CHX would rebate such fees upon Commission approval of the proposed rule change. Telephone conversation between Leah Mesfin, Special Counsel, Division of Market Regulation, Commission, and Kathleen M. Boege, Vice President & Associate General Counsel, CHX, on September 26, 2005.

<sup>5</sup> See Securities Exchange Act Release No. 52200 (August 3, 2005), 70 FR 46238.

<sup>6</sup> 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).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52561; File No. SR-PCX-2005-107]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rules Regarding Lead Market Maker's Guaranteed Participation in Trades Executed by Public Outcry

October 4, 2005.

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 September 23, 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 and II below, which Items have been prepared by the Exchange. The PCX filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii)<sup>3</sup> of the Act and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it 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

The PCX proposes to amend PCX Rule 6.82(d) to better describe a Lead Market Maker's ("LMM") guaranteed participation on trades that are executed via public outcry. The text of the proposed rule change, is available on the PCX's Web site (<http://www.pacificex.com>), at the PCX's principal office, 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 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 those 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

The Exchange submits that the purpose of the proposed rule change is to adopt clarifying language to better describe an LMM's guaranteed participation in trades that occur via public outcry. The Commission recently approved changes to PCX rules pertaining to LMMs.<sup>5</sup> These changes allow an LMM to operate from a location other than the PCX trading floor.

According to the Exchange, its intention at all times was that if an LMM is not present on the trading floor they will not be entitled to a 40% guaranteed participation (as specified in PCX Rule 6.82(d)(2)) on any trade that occurs in the trading crowd via public outcry. While this provision was described in the purpose statement of SR-PCX-2005-31, the PCX at this time feels that a change to the rule text will clarify when an LMM is actually entitled to their guaranteed participation on trades in accordance with Rule 6.82(d)(2). The proposed rule change now clearly states that LLMs will be entitled to their 40% guaranteed participation on public outcry trades only when they are preset in the trading crowd.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirements that rules of an exchange be designed to facilitate transactions in securities, to promote just and equitable principles of

<sup>10</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.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 51937 (June 29, 2005), 70 FR 38997 (July 6, 2005) (SR-PCX-2005-31).

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

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