

Director. . . ." (Brackets indicate deletions.)²

2. Statutory Basis

The proposed rule change relates to Section 6(b)(1) of the Act³ in that it will permit the Exchange, through its Floor Governors, to perform more effectively those duties prescribed in the rules relating to supervision and regulation of Floor matters.

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

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

This proposed rule change is concerned solely with the administration of the Exchange and, as such, may take upon filing with the Commission pursuant to Section 19(b)(3)(A)(iii)⁴ of the Act and Rule 19b-4(e)(3) under the Act.⁵ This designation is based on the fact that the rule change relates solely to the increase in the number of Floor Governors performing duties prescribed in the rules concerning supervision and regulation of Floor matters. 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.

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.⁶

²Telephone call between Donald Siemer, Director, NYSE Market Surveillance, and Joseph P. Corcoran, Division of Market Regulation, Commission.

³15 U.S.C. 78f(b)(1).

⁴15 U.S.C. 78s(b)(3)(A)(iii).

⁵17 CFR 240.19b-4(e)(3).

⁶In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549. 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-98-31 and should be submitted by November 12, 1998.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40551; File No. SR-PCX-98-36]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Pacific Exchange, Inc., Relating to the OptiMark System—Specialists Bids and Offers

October 14, 1998.

I. Introduction

On July 2, 1998, the Pacific Exchange, Inc. ("PCX" or the "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "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 that would require Specialists to ensure that their best bids and offers will be represented in the OptiMark System.

On August 27, 1998, the proposed rule change was published for comment in the **Federal Register**.³ The

⁷17 CFR 200.30-3(a)(12).

¹15 U.S.C. 78s(b)(1).

²17 U.S.C. 19b-4.

³Securities Exchange Act Release No. 40348 (August 20, 1998), 63 FR 45892.

Commission received one comment letter on the proposal.⁴

This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to adopt new Rule 15.3(b) to require PCX Specialists to use the PCX Application of the OptiMark System ("PCX Application") with respect to the bids and offers that they publish. The purpose of the rule is to facilitate best execution of customer orders by requiring PCX Specialists to include best bids and offers in the OptiMark System as Profiles. Specifically, proposed Rule 15.3(b) provides that PCX Specialists must ensure that at all relevant times during regular trading hours, their best bids and offers (whether reflecting limit orders or the Specialist's own interest) will be included in the OptiMark System. Once included, such trading interest is expected to interact with other trading interest, resulting in improved execution opportunities on the PCX. The Exchange believes that the rule change will facilitate interaction between the PCX Application and existing trading interest on the PCX floors, thereby promoting more efficient and effective market operations.

The Exchange is also proposing to modify PCX Rule 15.2 by adding the following provision: "The Exchange will assure that each Specialist is provided with appropriate access to the PCX Application for the purpose of submitting Profiles from the Specialist's Post."

III. Discussion

After careful review, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposed rule change is consistent with Section 11A(a)(1)(C)(iii) and (iv) of the Act. Congress found in those provisions that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure that availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure

⁴Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, dated September 16, 1998. In the comment letter, the NYSE took no position on whether the Commission should approve PCX's proposal. NYSE noted, however, that the filing does not address the NYSE's concerns regarding proposed amendments to the plan governing the Intermarket Trading System to accommodate the OptiMark System and the PCX Application.

the practicability of brokers executing investors' orders in the best market.⁵ The proposed rule change will assure the availability of information with respect to quotations because it requires specialists to enter best bids and offers (whether their own or those of customers) into the OptiMark System at all relevant times during regular trading hours. Similarly, because customer limit orders as well as the Specialist's own bids and offers must be entered into the OptiMark System, there will be an opportunity for price improvement for quotations in the OptiMark System.

In addition, the Commission believes the proposal is consistent with the Section 6(b)(5)⁶ requirements that the rules of an exchange not be designed to discrimination against broker-dealers issuers and others using the Exchange because each PCX Specialist must be provided with appropriate access to the PCX Application at the Specialist's Post.⁷

In approving the proposal, the Commission is not suggesting that PCX Specialists' use of the OptiMark System satisfies those specialists' best execution obligations. By enhancing the investment choices available to investors over a broad range of trading scenarios, however, the proposal should help to ensure that investors that trade through PCX have an enhanced opportunity to obtain better prices for their securities transactions.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (PCX-98-36) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-28196 Filed 10-20-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40548; File No. SR-PCX-98-50]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. to Make the LMM Book Pilot Program Permanent

October 14, 1998.

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 September 30, 1998, 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 and II below, which Items have been prepared by PCX. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to modify PCX Rule 6.82 to make the LMM Book Pilot Program permanent. Proposed new language is in *italics*; proposed deletions are in [brackets].

Text of the Proposed Rule Change Lead Market Makers

¶15181

Rule 6.82(a)-(h), No Change.

Commentary:

.01.—.02., No Change.

[.03. The provisions of Rule 6.82(h) are subject to a pilot program, which is set to expire on October 12, 1998.]

.03. [.04.], 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, 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 III 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

Background. The Commission approved the Lead Market Maker ("LMM") Book Pilot Program on October 11, 1996.³ Under the program, a limited number of LMMs are able to assume operational responsibility for the options limit order book ("Book") in certain options issues.⁴ The approved LMMs manage the Book function, take responsibility for trading disputes and errors, set rates for Book execution, and pay the Exchange a fee for systems and services. The program allows LMMs to have greater control over their operations by allowing them to set their own rates for execution services provided to customers.

In April 1997, the Commission approved an Exchange proposal to expand the scope of the pilot program to allow up to nine LMMs to participate and up to 150 symbols to be used.⁵ In September 1997, the Commission approved PCX's request to extend the pilot program for one year.⁶ In addition, the Commission approved inclusion of non-multiply-listed options issues in the program in February 1998; elimination of the cap on the number of symbols that may be used under the program in May 1998; and elimination of the cap of the number of LMMs that may participate in the program in August 1998.⁷ The program currently has 10 LMM participants that are collectively trading 155 options issues (and 194 option symbols) as part of the pilot program.

Proposal. PCX is proposing to make the LMM Book Pilot Program permanent. The Exchange believes the program is operating successfully and without any problems, and on that basis, the Exchange believes that making the LMM Book Pilot Program permanent is warranted. The Exchange submitted a report on September 28, 1998, as requested by the Commission in Exchange Act Release No. 37810, which related to the one year extension of the pilot program approved in September

³ See Exchange Act Release No. 37810 (October 11, 1996), 61 FR 54481 (October 18, 1996).

⁴ *Id.*

⁵ See Exchange Act Release No. 38462 (April 1, 1997), 62 FR 16886 (April 8, 1997).

⁶ See Exchange Act Release No. 39106 (September 22, 1997), 62 FR 51172 (September 30, 1997).

⁷ See Exchange Act Release Nos. 39667 (February 13, 1998), 63 FR 9895 (February 26, 1998); 40020 (May 21, 1998), 63 FR 29286 (May 28, 1998); and 40328 (August 17, 1998), 63 FR 45276 (August 25, 1998).

⁵ 15 U.S.C. 78k-1(a)(1)(C) (iii) and (iv).

⁶ 15 U.S.C. 78f(b)(5).

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

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4