

### *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**

This proposed rule filing has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and subparagraph (e)(6) of Rule 19b-4 thereunder.<sup>7</sup> Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until January 2, 1998, more than 30 days from November 6, 1998, the date on which it was filed, the Commission waived the Rule 19b-4(e)(6)(iii) written notice requirement, upon the request of PCX.<sup>8</sup>

At any time within 60 days of the filing of the 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. 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of PCX.

All submissions should refer to File No. SR-PCX-98-56 and should be submitted by December 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-40734; File No. SR-PCX-98-55]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Crossed Markets Adjustments**

December 1, 1998.

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 November 5, 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, II and III below, which Items have been prepared by the Exchange. On November 30, 1998, the PCX submitted to the Commission an amendment to the proposed rule change.<sup>3</sup> 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 is proposing to clarify its rules on the automatic execution of option orders when the PCX market and the market of a competing exchange are crossed or locked (*i.e.*, the bid

disseminated through the facilities of one exchange is higher than or equal to the offer disseminated through the facilities of another exchange). The change is intended to make consistent the Exchange's rules on the handling of electronic orders in such circumstances. The text of the proposed rule change follows. Additions to the proposed rule are in *italics*; deletions are in [brackets].

Text of the Proposed Rule Change

#### **¶ 5231 Automatic Execution System**

Rule 6.87(a)-(c)—No Change.

(d) Auto-Ex NBBO. The Options Floor Trading C[c]ommittee ("OFTC") may designate electronic orders in an option issue to receive automatic executions at prices reflecting the national best bid or offer ("NBBO"), provided that the OFTC may designate, for an option issue, that an order will default for manual representation in the trading crowd if: (1) the order would be executed at a price that is more than one trading increment away from the PCX market price; or (2) the NBBO is crossed or locked].

(e) *Crossed or Locked Markets. The OFTC may designate, for an option issue, that an order will default for manual representation in the trading crowd if the NBBO is crossed or locked.*

### **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**

On September 8, 1998, the Commission approved a PCX rule change regarding the automatic execution of option orders.<sup>4</sup> The rule change provides that the Exchange's Options Floor Trading Committee ("OFTC") may designate electronic orders in an option issue to receive automatic executions at prices reflecting the National Best Bid or Offer

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(e)(6).

<sup>8</sup> See Amendment No. 1.

<sup>9</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> The proposed rule change was originally filed pursuant to Section 19(b)(3)(A)(ii) of the Act. The amendment converted the proposed rule change to a filing pursuant to Section 19(b)(2) of the Act. Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX to Kelly McCormick, Attorney, Division of Market Regulation, SEC, dated November 27, 1998 ("Amendment No. 1").

<sup>4</sup> Exchange Act Release No. 40412 (September 8, 1998), 63 FR 49626 (September 16, 1998) (SR-PCX-98-27).

("NBBO").<sup>5</sup> It further provides that the OFTC may designate, for an option issue, that if the NBBO is crossed (e.g., 6 1/8 bid, 6 asked) or locked (e.g., 6 bid, 6 asked), then customer orders would exit the automatic execution system of the Exchange and default for Floor Broker representation in the trading crowd.<sup>6</sup>

After the Commission approved File No. SR-PCX-98-27, the PCX has become aware that PCX Rule 6.87(d), the rule that the proposal changed, could imply that the OFTC can designate an option issue for Floor Broker representation in crossed and locked markets only if the issue is eligible to receive automatic execution at the NBBO. The Exchange, however, intended to allow the OFTC to designate any issue for Floor Broker representation in crossed and locked markets. Accordingly, the Exchange is now proposing to modify Rule 6.87 to clarify that the OFTC may designate, for any option issue, that if the NBBO is crossed or locked, then customer orders will default for Floor Broker representation in the trading crowd regardless of whether the Exchange's Auto-Ex system is set to execute orders at prices reflecting the NBBO.

The Exchange is planning to implement a systems change to cover the potential for Floor Broker representation of option orders during crossed or locked markets. However, before effecting that change, the Exchange has determined to file this proposal to clarify the Exchange's procedure on the handling of option orders when the NBBO is crossed or locked. Accordingly, upon approval of this proposal, the Exchange will be in a position to effect the appropriate systems changes as quickly as possible.

As with PCX-98-27, the Exchange believes that its proposal, if implemented, will serve to protect public customers from receiving inferior prices on their orders in situations where the NBBO is crossed or locked. For example, if the PCX's market is 5 bid, 5 1/4 asked, and Exchange B's market is 4 bid, 4 1/4 asked, the NBBO will be 5 bid, 4 1/4 asked. If the 5 bid is based on a public customer order for 10 contracts, and that order is automatically executed, the customer would be deprived of an opportunity to cancel the order at 5 and buy 10 contracts at Exchange B at 4 1/4. This could occur regardless of whether the PCX Auto-Ex is using the NBBO or PCX quotes. Moreover, during the time that the market is crossed, it is not

immediately clear whether the crossed markets arise from errors resulting from communication or system problems, keystroke errors, quotation dissemination delays, or are in fact true markets. The default mechanism will give Floor Brokers in the trading crowd an opportunity to ascertain whether the markets are erroneous and to assure that customers receive the best possible price.

While these situations occur very infrequently, the Exchange believes that investors should be protected through the use of human intervention. During these times (if so designated by the OFTC for a particular option issue), public customer orders will be manually represented in the trading crowd by Floor Brokers and handled in a manner that is consistent with the Floor Brokers' best execution obligations.<sup>7</sup>

## 2. Basis

The proposal is consistent with Section 6(b)(5)<sup>8</sup> of the Act because it is designed to facilitate transactions in securities.

### *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 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 the 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 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. 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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-98-55 and should be submitted by December 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-40728; File No. SR-PHLX-98-37]

### **Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Rule 220 Regarding Stopping Stock**

November 30, 1998.

## **I. Introduction**

On September 28, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 adopt Rule 220, which concerns stopping stock.

The proposed rule change was published for comment in the **Federal**

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See PCX Rule 6.46 ("Responsibilities of Floor Brokers").

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</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.