

raises collateral issues that the Amex will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for Auto-Ex. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed on to the Amex's Auto-Ex system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price; however, these risks are somewhat offset by the fact that the Exchange's Auto-Ex system allocates executed contracts into lots of 10 contracts among the specialist and any ROTs logged onto Auto-Ex.

In addition, when the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through Auto-Ex, the greater the risk market makers must be willing to accept. The Commission does not believe that, because Amex floor governors or senior floor officials determine to approve orders as large as 500 contracts as eligible for Auto-Ex, Amex floor governors or senior floor officials or Amex staff should disengage Auto-Ex more frequently by, for example, declaring an "unusual market condition." Disengaging Auto-Ex can negatively affect investors by making it slower and less efficient to execute their orders.¹⁶ It is the Commission's view that the Amex, when increasing the maximum size of orders that can be sent through Auto-Ex, should not disadvantage all customers—the vast majority of whom enter orders for less than 500 contracts—by making their automatic execution systems less reliable.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5).¹⁷

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁸ that the

proposed rule change (SR-Amex-2003-08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47664; File No. SR-PCX-2003-14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. and Amendment No. 1 Thereto Regarding the Maximum Permissible Number of Nasdaq-100 Tracking Stock ("QQQ") Option Contracts Executable Through the Exchange's Automatic Execution System ("Auto-Ex")

April 10, 2003.

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 March 27, 2003, the Pacific Exchange, Inc. ("Exchange" or "PCX") 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 PCX. The proposed rule change has been filed by the PCX as a "non-controversial" rule change under rule 19b-4(f)(6) under the Act.³ On April 7, 2003, the PCX filed Amendment No. 1 to the proposed rule change.⁴ 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

PCX proposes to amend its rules to increase to 2,000 contracts in the first two near term expiration months, and to 1,000 contracts for all other expiration months, the maximum permissible number of QQQ option contracts in an

order that can be executed through Auto-Ex.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*.

* * * * *

Automatic Execution System

Rule 6.87(a)-(b)(5)—No change.

(6) The OFTC or its delegate consisting of two Floor Officials shall determine the size of orders that are eligible to be executed on Auto-Ex. The OFTC or its delegate, two Floor Officials, may approve requests of the Lead Market Makers to execute orders on Auto-Ex in sizes greater than 20 contracts. Although the order size parameter may be changed on an issue-by-issue basis by the OFTC or its delegate, two Floor Officials, the maximum order size for execution through Auto-Ex is as follows:

(A) Equity Options: the maximum order size for execution through Auto-Ex for equity options is 250 contracts *except for options on the Nasdaq-100 Tracking Stock (QQQ) in which case, the maximum order size will be 2,000 contracts in the first two (2) near term expiration months and 1,000 contracts for all other expiration months;*

(B) Index Options: the maximum order size for execution through Auto-Ex is 250 contracts.

(7)—No change.

(c)-(p)—No change.

Commentary .01-.08—No change.

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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

The Exchange proposes to increase the maximum order size eligibility for Auto-Ex in the first two near term expiration months in QQQ options to 2,000 contracts and to 1,000 contracts

¹⁶ See Amex Rule 933(f)(i), specifying the circumstances in which Auto-Ex may be disengaged or operated in a manner other than the normal manner.

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ See letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 4, 2003. In Amendment No. 1, PCX amended the proposed rule text of the proposed rule change to reflect the current rule language of PCX rule 6.87.