

rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>14</sup> Waiving the pre-filing requirement and accelerating the operative date will merely extend a pilot program that is designed to provide investors with a mechanism to resolve disputes with broker "dealers. During the period of this extension, the Commission and NYSE will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

#### 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 20549-0609. 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. NYSE-2003-16 and should be submitted by June 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03-12457 Filed 5-19-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47843; File No. SR-PCX-2002-54]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to a One Tick Step Up Requirement for Auto-Ex in Certain Option Issues

May 13, 2003.

#### I. Introduction

On August 27, 2002, the Pacific Exchange, Inc. ("PCX" 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 a one-tick step up requirement for market makers who are participating on the Exchange's Automatic Execution System ("Auto-Ex"). On March 19, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published in the **Federal Register** on April 9, 2003.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

#### II. Description

The Exchange is proposing to adopt PCX Rule 6.87(e)(8) relating to the Exchange's Auto-Ex System for options trading. Currently, options market makers who are logged on to Auto-Ex are obligated to meet certain requirements with respect to their use of Auto-Ex. These obligations are set forth in PCX Rule 6.87(e)(1)-(7). The Exchange is proposing to adopt a new rule that would require Lead Market Makers ("LMMs") participating on Auto-Ex to step up and execute certain orders at prices better than the Exchange is disseminating under specified conditions.

PCX Rule 6.87(i) currently allows the Options Floor Trading Committee ("OFTC") to require market makers to step up at least one trading increment to the national best bid or offer ("NBBO") for electronic orders in selected issues.<sup>4</sup>

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

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

<sup>3</sup> See Securities Exchange Act No. 47615 (April 2, 2003), 68 FR 17420.

<sup>4</sup> Further, pursuant to PCX Rule 6.87(i), the OFTC may designate that an order will default for manual representation in the trading crowd if the order would be executed at a price that is more than one trading increment away from the PCX market price.

The proposed rule change would impose an alternative step up requirement on LMMs. Under the proposal, if the OFTC has not exercised its authority to require step up to the NBBO, the Exchange will set the Auto-Ex System to require LMMs to step up and execute trades in selected issues at the NBBO if the LMM is quoting a price within one tick of the NBBO as disseminated by another exchange. If the LMM is quoting a price that is more than one trading increment inferior to the price being disseminated by another options exchange, the order will default for manual representation in the trading crowd.

Proposed PCX Rule 6.87(e)(8) only will apply to non-broker-dealer orders for ten contracts or less in option issues that are ranked in the 120 most actively traded equity options based on the total number of contracts traded nationally for a specified month based on volume as reported by the Options Clearing Corporation. In addition, the rule will only apply to orders in option series that are not designated as LEAPS pursuant to PCX Rule 6.4(e).

The Exchange's determination of whether an equity option ranks in the top 120 most active, nationally-traded issues will be based on volume statistics reported by the Options Clearing Corporation. The Exchange's determination of whether an equity option ranks in the top 120 most active issues will be based on volume statistics for the three calendar months of trading activity beginning four months prior to the current month. The Exchange has represented that it intends to notify its Members of the issues that are designated to be in the top 120 via a regulatory bulletin that will be published at the beginning of each month.

#### III. Discussion

After careful consideration, 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. In particular the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>5</sup> which requires among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the

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

<sup>14</sup> For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).