

Commission approved.¹⁷ Notice of the CBOE Pilot was published for comment¹⁸ and the Commission received one comment letter, which supported the CBOE's proposal. Accordingly, the Commission believes that the Amex's Pilot Program raises no issues of regulatory concern. Amendment No. 2 clarifies the proposal by specifying the expiration date for the Pilot Program and the strike price intervals for options on individual stocks and ETFs. For these reasons, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b) of the Act,¹⁹ to approve the Amex's proposal, as amended, on an accelerated basis, through June 5, 2004.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-Amex-2003-36) and Amendments No. 1 and 2 thereto are hereby approved, on an accelerated basis and as a pilot program, through June 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48019; File No. SR-PCX-2003-16]

Self-Regulatory Organizations; Notice of Filing and Order Accelerating Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to an Amendment to the Auto-Ex Incentive Program

June 11, 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 May 21, 2003, 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 the Exchange. On June 6, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

PCX proposes to amend its rules to extend the Automatic Execution System ("Auto-Ex") Incentive Pilot Program until June 30, 2004. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

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 self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 25, 2001, the Commission approved, as a nine-month pilot program, the Exchange's proposal to amend Rule 6.87, which governs the operation of Auto-Ex,⁴ to provide an

Auto-Ex Incentive Program for apportioning Auto-Ex trades among Market Makers.⁵ On June 7, 2002, the Commission extended the Auto-Ex Incentive Program pilot for six months⁶ and on December 24, 2002, the Commission extended the pilot for an additional six months.⁷ The pilot program is currently set to expire on June 24, 2003.

The Auto-Ex Incentive Program allows the Exchange to assign Auto-Ex orders to logged-on Market Makers according to the percentage of their in-person agency⁸ contracts traded in an issue (excluding Auto-Ex contracts) compared to all of the Market Maker in-person agency contracts traded (excluding Auto-Ex contracts) during the review period. The review period is determined by the Options Floor Trading Committee ("OFTC") and may be for any period of time not in excess of two weeks.⁹ The percentage distribution determined for a review period will be effective for the succeeding review period.

The Exchange is requesting an additional extension of the pilot program from June 24, 2003 through June 30, 2004. The added time permits the Exchange to phase-in the Exchange's new trading platform for options, "PCX Plus", on an issue-by-issue basis.¹⁰ As each issue is phased into PCX Plus, the Exchange will simultaneously phase-out such issue from the Auto-Ex Incentive Program. PCX Plus will eventually replace the Auto-Ex Incentive Program in its entirety. Therefore, the Exchange believes that an extension of the program is warranted until June 30, 2004, the date on which PCX Plus will be completely operative.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b)¹¹ of the Act, in general, and furthers the objectives of

¹⁷ See Securities Exchange Act Release No. 47991 (June 5, 2003) (order approving File No. SR-CBOE-2001-60).

¹⁸ See Securities Exchange Act Release No. 47753 (April 29, 2003), 68 FR 23784 (May 5, 2003).

¹⁹ 15 U.S.C. 78f(b)(5) and 78s(b).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Tania J. Cho, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 5, 2003 ("Amendment No. 1"). In Amendment No. 1, PCX amended its proposal to request an extension of its Auto-Ex Incentive Program pilot until June 30, 2004, rather than June 24, 2004, as stated in the original proposal, so that the pilot's expiration coincides with the date on which the Exchange's "PCX Plus" system will be completely operative. See *supra* n. 10 and accompanying text.

⁴ Auto-Ex is the Exchange's Automated Execution system feature of POETS for market or marketable limit orders. The Pacific Options Exchange Trading System ("POETS") is the Exchange's automated trading system comprised of an options order routing system, an automatic execution system ("Auto-Ex"), an on-line limit order book system and an automatic market quote update system. Option orders can be sent to POETS via the Exchange's Member Firm Interface ("MFI"). Market and marketable limit orders sent through the MFI will be executed by Auto-Ex if they meet the order type and size requirements of the Exchange.

⁵ See Exchange Act Release No. 44847 (September 25, 2001), 66 FR 50237 (October 2, 2001) (SR-PCX-01-05).

⁶ See Exchange Act Release No. 46115 (June 25, 2002), 67 FR 44494 (July 2, 2002) (SR-PCX-2002-34).

⁷ See Exchange Act Release No. 47088 (December 24, 2002), 68 FR 140 (January 2, 2003) (SR-PCX-2002-78).

⁸ Agency contracts are those contracts that are represented by an agent and do not include contracts traded between Markets Makers in person in the trading crowd.

⁹ The OFTC has set a two-week review period for all options classes and the OFTC will not vary the term of the review period except for exigent circumstances.

¹⁰ See Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) ("PCX Plus Order").

¹¹ 15 U.S.C. 78f(b).