

ask spread set forth in Rule 6.37(b)(1), by an amount as set forth in Rule 6.37(b)(3). For the purpose of this calculation, the Exchange will not apply a wider bid/ask spread as provided for LEAPS or for options subject to unusual market conditions; or

- The trade resulted in an execution price in a series quoted no bid and at least one strike price below (for calls) or above (for puts) in the same class were quoted no bid at the time of the erroneous execution; or

- The trade is automatically executed at a price where the Market Maker sells \$0.10 or more below parity. Parity describes an option contract's total premium when that premium is equal to its intrinsic value. Parity for calls is measured by reference to the offer price of the underlying security in the primary market at the time of the transaction minus the strike price for the call. Parity for puts is measured by the strike price of an underlying security minus its bid price in the primary market at the time of the transaction.

Under the proposed rule change, when a Market Maker on the Exchange believes that it participated in a transaction that was the result of an obvious error, it must notify two Floor Officials⁵ within five minutes of the execution. If an Order Entry Firm representing a public customer believes an order it executed on the Exchange was the result of an Obvious Error, it must notify the Exchange within twenty (20) minutes of the execution. Absent unusual circumstances, two Floor Officials will not grant relief under the proposed rule change unless notification is made within the prescribed time periods.

As proposed, two Floor Officials will determine whether the execution is subject to a trade nullification or price adjustment. If two Floor Officials determine that one of the above-stated conditions has occurred, and the complaining party has timely documented a request for relief, then the Floor Officials will take one of the following actions:

- (1) Where each party to the transaction is a Market Maker on the Exchange or the trade involves a limit order than may be adjusted to its limit, the execution price of the transaction will be adjusted within ten minutes of the Floor Officials making such a determination. In such case, the adjusted price will be the last bid (offer) price just prior to trade from the

exchange providing the highest total contract volume for the previous sixty (60) days in the option with respect to an erroneous bid (offer) entered on the Exchange. If there is no quote for comparison purposes, then the adjusted price of the option will be determined by two Floor Officials.

- (2) If at least one party to the transaction is not a Market Maker on the Exchange or where the trade does not involve a limit order that may be adjusted to its limit, the trade will be nullified within ten (10) minutes of two Floor Officials making such determination.

All determinations made by the two Floor Officials under the proposed rule change will be rendered without prejudice as to the rights of the parties to the transaction to submit a dispute to arbitration. The Exchange believes that the rule proposal promotes fair and equitable resolutions of erroneous trades.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5)⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

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 did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of 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 Exchange consents, the Commission will:

- (A) by order approve such 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, as amended, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-2002-01 and should be submitted by September 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48351; File No. SR-PCX-2003-34]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc., and Amendment No. 1 Thereto, Relating to its Arbitration Program

August 15, 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 July 9,

⁵ In no case will the two Floor Officials involved in an obvious error determination include a person related to a party to the trade in question.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.