

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 CBOE. All submissions should refer to File No. SR-CBOE-2003-31 and should be submitted by October 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48538; File No. SR-PCX-2002-01]

Self Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change by the Pacific Exchange, Inc., Relating to Procedures for Obvious Errors in Options Transactions

September 25, 2003.

I. Introduction

On January 3, 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"),¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt an obvious error rule for options transactions. On July 28, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.³ On August 8, 2003, the Exchange submitted Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as

amended, was published for comment in the **Federal Register** on August 22, 2003.⁵ The Commission did not receive any comments on the proposed rule change. On September 16, 2003, the PCX filed Amendment No. 3 to the proposed rule change.⁶ This order approves the proposed rule change, as amended, grants accelerated approval to Amendment No. 3, and solicits comments from interested persons on that amendment.

II. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5)⁸ of the Act, which requires that the rules of an exchange be 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.⁹

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an "obvious error" may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether such an "obvious error" has occurred should be based on specific and objective criteria and subject to

Assistant Director, Division, Commission, dated August 7, 2003 ("Amendment No. 2"). Amendment No. 2 supersedes and replaces the proposed rule change and Amendment No. 1 in their entirety.

⁵ See Securities Exchange Act Release No. 48342 (August 14, 2003), 68 FR 50820 (August 22, 2003) ("Notice").

⁶ See Letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, Exchange, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 15, 2003 ("Amendment No. 3"). In Amendment No. 3, the Exchange amended proposed PCX Rule 6.87(g)(2)(E) to clarify a provision relating to the determination of an obvious price error and amended proposed PCX Rule 6.87(g)(2)(G) to clarify the definition of "parity."

⁷ For a description of the proposed rule change, see Notice, *supra*, n.4.

⁸ 15 U.S.C. 78f(b)(5).

⁹ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

specific and objective procedures. The Commission believes that the PCX's proposed obvious error rule establishes specific and objective criteria for determining when a trade is an "obvious error." The Commission also believes that the proposal establishes specific and objective procedures governing the adjustment or nullification of such trade. In addition, the Commission notes that several provisions of the PCX obvious error rule proposal, as amended, are substantially similar to proposed rule changes submitted by the Chicago Board Options Exchange, Inc. and International Securities Exchange, Inc., which the Commission has approved.¹⁰

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 3 does not make any substantive changes to the proposed rule text. It simply clarifies the determination of an obvious price error and the definition of a transaction executed below parity. Therefore, the Commission believes that granting accelerated approval of Amendment No. 3 is appropriate and consistent with section 6(b)(5)¹¹ and section 19(b)¹² of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 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 proposal that are filed with the Commission, and all written communications relating to the proposal 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.

¹⁰ See Securities Exchange Act Release No. 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (SR-CBOE-00-55); Securities Exchange Act Release No. 48097 (June 26, 2003), 68 FR 39604 (July 2, 2003) (SR-ISE-2003-10).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b).

⁷ 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 Mai S. Shiver, Senior Attorney, Regulatory Policy, Exchange, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 25, 2003 ("Amendment No. 1"). Amendment No. 1 supersedes and replaces the proposed rule change in its entirety.

⁴ See Letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, Exchange, to Nancy J. Sanow,