

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 NASD. All submissions should refer to File No. SR-NASD-2003-139 and should be submitted by November 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-26744 Filed 10-22-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48640; File No. SR-PCX-2003-47]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. Relating to the Manner in Which a Contrary Exercise Advice Is Submitted and To Extend by One Hour the Time for Members To Submit Contrary Exercise Advices

October 16, 2003.

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> notice is hereby given that on September 11, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the PCX. The Exchange amended its proposal on September 22, 2003.<sup>3</sup> The proposal was

also amended by the Exchange on October 10, 2003.<sup>4</sup> The Exchange filed the proposed rule change, as amended, under paragraph (f)(6) of Rule 19b-4 under the Act.<sup>5</sup> 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

The Exchange proposes to amend PCX Rule 6.24 regarding the manner in which a contrary exercise advice ("CEA") is submitted to the Exchange and to extend by one hour the time for Members and Member Organizations to submit CEAs to the Exchange. Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deleted text is [bracketed].

\* \* \* \* \*

Rule 6.24. (a) [Subject to the restrictions set forth in Rule 6.9 and to such restrictions as may be imposed pursuant to Rule 6.11 or pursuant to the Rules of the Options Clearing Corporation ("OCC"), an outstanding option contract may be exercised during the time period specified in the Rules of the OCC by the tender to the OCC of an exercise notice in accordance with the Rules of the OCC.] *An outstanding option contract may be exercised by the tender to the Options Clearing Corporation ("OCC") of an exercise notice made during the periods, and using the procedures, specified in OCC rules. An exercise notice may be tendered to the OCC only by the clearing member in whose account such option contract is carried with the OCC. Option exercises are also subject to restrictions that are established by or may be imposed by the Exchange in Rules 6.9, 6.11 and in this rule. Members and Member Organizations may establish fixed procedures as to the latest time they will accept exercise instructions from customers.*

(b) [The exercise cut-off time for all non-cash settled options shall be such hour on the business day immediately prior to the expiration date as may be fixed from time to time by the Exchange. The exercise cut-off time, as so fixed by

thirty-day operative date specified in Rule 19b-4(f)(6) of the Act and changed rule language in proposed PCX Rule 6.24(f) and proposed Commentary .06.

<sup>4</sup> See letter from Mai Sharif Shiver, Senior Attorney, PCX, to Nancy Sanow, Assistant Director, Division, Commission, dated October 9, 2003 ("Amendment No. 2"). In Amendment No. 2, the PCX added language to the rule text that was inadvertently deleted from its original filing.

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

a member organization or as established pursuant to the preceding sentence, shall also apply in respect of option contracts carried in any proprietary account of such member organization as the latest time at which such member organization, if it is a clearing member, shall tender exercise notices to the OCC, or if it is not a clearing member, shall issue exercise instructions to its clearing member. Notwithstanding the foregoing, member organizations may receive and members may submit exercise instructions and tender exercise notices after the exercise cut-off time but prior to expiration (i) in the case of option contracts carried in an account maintained for another member organization in which only positions of customers of such other member organization are carried, (ii) in order to remedy mistakes or errors made in good faith, (iii) to take appropriate action as the result of a failure to reconcile unmatched Exchange transactions, or (iv) where exceptional circumstances relating to a customer's ability to communicate exercise instructions to the member organization (or the member organization's ability to receive exercise instructions) prior to such cut-off time warrant such action. This subparagraph (b) is intended as a means of providing for relatively uniform procedures in respect of exercise instructions and not to alter or affect in any way the expiration times for an option contract which are fixed in accordance with the Rules of the OCC or any other provision of an option contract, and the exercise prior to expiration of an option contract in contravention of this subparagraph (b) shall neither affect the validity of such exercise nor modify or otherwise affect any right or obligation of any holder or writer of any option contract of such series of options. As used herein with respect to any member organization, the word "customer" shall mean every person other than the member organization.] *Special procedures apply to the exercise of equity options on the last business day before their expiration ("expiring options"). Unless waived by OCC, expiring options are subject to the Exercise by Exception ("Ex-by-Ex") procedure under OCC Rule 805. This rule provides that, unless contrary instructions are given, option contracts that are in-the-money by specified amounts shall be automatically exercised. In addition to OCC rules, the following Exchange requirements apply with respect to expiring options. Option holders desiring to exercise or not exercise expiring options must either: (i) take no action and allow exercise*

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 217 CFR 240.19b-4.

<sup>3</sup> See letter from Mai Sharif Shiver, Senior Attorney, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 17, 2003 ("Amendment No. 1"). In Amendment No. 1, the PCX requested that the Commission waive the