

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Determination of Top 120 and 250 Issues

February 21, 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 January 27, 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, II and III below, which Items have been prepared by the PCX. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

PCX proposes to amend PCX Rule 6.37(b)(5), PCX Rule 6.87(b), the PCX Schedule of fees, and RBO 02-08 in order to change the calculation period for determining the top 120 and top 250 issues. The text of the proposed rule change is available for inspection and copying in the Commission's Public Reference Room and at the principal office of the PCX.

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 PCX 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 IV below. The 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

In evaluating the type and quality of issues traded on the Exchange, the Exchange ranks issues based upon the total national volume. A common benchmark that the Exchange uses is called "top 120" and "top 250," indicating that equity option issues falling within these groups would qualify as being among the top 120 or top 250, respectively, of the most actively-traded equity option issues. Because the Exchange relies on the top 120 and top 250 rankings with respect to many of its processes, it believes it needs to define them in such a way as to provide greater accuracy and meaning to the point of reference. Currently, the Exchange defines "top 120" as:

for each current month, 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 one month of trading activity that occurred two months prior to the current month.

The Exchange determines the top 250 rankings in the same manner. Accordingly, the current approach would use September's national equity option volumes to determine November's rankings.

The Exchange represents that it has observed that volumes fluctuate from month to month and as a result, an issue may fall out of, or into, the top 120 or top 250 ranking somewhat sporadically. Moreover, the Exchange believes that evaluating the option volumes over a one-month period does not provide great accuracy in determining the long-term performance of an issue and its rank. Accordingly, the Exchange proposes to adopt a trailing three-month average, starting with the most currently completed calendar month, in order to determine the rankings of issues. For

example, under the proposed rule change, the Exchange would determine its November ranking in October and base the ranking on the national volumes of the September, August and July trade months. Consistently, it would determine its December ranking in November and base it on the October, September and August national volumes.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,⁵ in general, and furthers the objective of section 6(b)(5),⁶ in particular, because it is 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 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

Written comments on the proposed rule change were neither solicited nor received.

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

The PCX represents that it submitted a draft of this filing, including the proposed new rule text, to the Commission on January 9, 2003 in fulfillment of the five-day draft notice period of Rule 19b-4(f)(6).⁷ The PCX has further designated that the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the proposed rule change has become effective immediately upon filing with the Commission pursuant to section

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6). The PCX requests that the Commission waive the 30-day operative delay. The PCX provided the Commission with notice of its intention to file this proposal on January 9, 2003.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 240.19b-4(f)(6).