

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 CBOE obvious error rule proposal are substantially similar to proposed rule changes submitted by the Pacific Exchange, Inc. to adopt an obvious error rule and by the Exchange to adopt a trade nullification rule for CBOEdirect, both of which the Commission has approved.<sup>11</sup> Finally, the Commission notes that CBOE represented that, with the adoption of CBOE Rule 6.25, the Exchange withdraws the effectiveness of CBOE Regulatory Circular RG 00-169.<sup>12</sup>

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> for approving Amendment No. 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 4 strengthens the proposal by clarifying the circumstances under which the CBOE obvious error rule will apply; by describing the meaning of certain provisions contained in CBOE Rule 6.25; and by withdrawing a provision of another CBOE rule that is superceded by CBOE Rule 6.25. Therefore, the Commission believes that granting accelerated approval of Amendment No. 4 is appropriate and consistent with Section 6(b)(5)<sup>14</sup> of the Act.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether Amendment No. 4 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. SR-CBOE-2001-04 and should be submitted by December 23, 2003.

### IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-CBOE-2001-04), as amended, be, and hereby is, approved, and that Amendment No. 4 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48837; File No. SR-ISE-2003-24]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc., Relating to Fee Changes

November 25, 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 October 3, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the ISE. 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

The Exchange is proposing changes to its Schedule of Fees in order to adopt

certain fees and temporary fee waivers relating to index options. The text of the proposed rule change is available at the ISE 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 Exchange 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 Exchange 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

The Exchange is proposing changes to its Schedule of Fees in order to adopt certain fees and temporary fee waivers relating to index options.

The Exchange plans to list index options for trading. The first index option product the Exchange plans to list is the S&P SmallCap 600 Index. The Exchange has entered into a license agreement to use various indexes and trademarks of Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P"), in connection with the listing and trading of index options on the S&P SmallCap 600 Index. As with licensed equity options, the Exchange is adopting a member fee for trading in these options to defray the licensing costs. The Exchange believes that charging the participants that trade these instruments is the most equitable means of recovering the costs of the license.

However, the Exchange is proposing to temporarily waive certain transaction fees that would otherwise apply to index options in an attempt to generate trading interest and for competitive purposes. Specifically, the Exchange is proposing to waive the following transaction fees on index options until February 28, 2004: (i) The facilitation execution fee; (ii) the market maker and firm proprietary execution fee; (iii) the surcharge for options on the S&P SmallCap 600 Index execution fee; and (iv) the comparison fee. Lastly, the Exchange made certain minor, non-substantive changes to its Schedule of Fees for clarity and consistency, as well as removed language relating to a

<sup>11</sup> See Securities Exchange Act Release Nos. 48538 (September 23, 2003), 68 FR 56858 (October 2, 2003) (File No. SR-PCX-2002-01); and 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (File No. SR-CBOE-00-55).

<sup>12</sup> See Amendment No. 1, *supra* note 3; see also Notice and Partial Approval Order, *supra* note 6.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

temporary fee waiver for market maker and firm proprietary complex order execution fees that expired on June 30, 2003.

## 2. Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(4) of the Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.<sup>3</sup>

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not 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 has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change, which establishes or changes a due, fee or other charge imposed by the Exchange, has become effective pursuant to section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(2)<sup>5</sup> thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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 in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE-2003-24 and should be submitted by December 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48828; File No. SR-PCX-2003-65]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to Exchange Rules for the Automatic Executions of Intermarket Linkage Orders in Locked Markets**

November 24, 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 November 21, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with 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 Exchange. On November 24, 2003, the PCX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change has been filed by PCX as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.<sup>4</sup> The

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Mai Shiver, Acting Director, Regulatory Policy, PCX to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 21, 2003 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>4</sup> 17 CFR 240.19b-4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under

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 PCX is proposing to amend its rules to eliminate a Lead Market Maker's ("LMM") ability to have Linkage Orders in a locked market default for manual representation when those orders would otherwise be automatically executed via the Exchange's automatic execution ("Auto-Ex") system.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*; deletions are in [brackets].

\* \* \* \* \*

## Rule 6

### Options Trading

#### Rule 6.87 Automatic Execution System

(a)-(i)—(No change.)

(j) Crossed or Locked Markets. *Except as provided herein*, [T]wo Floor Officials may approve an LMM's request to designate, for an option issue, that an order will default for manual representation in the trading crowd if the NBBO is crossed or locked. *Notwithstanding the foregoing, Linkage Orders subject to PCX Rule 6.93(e) will not default for manual representation if the NBBO is locked.*

(k)-(p)—(No change.)

#### Commentary

.01-.08—(No change.)

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### **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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on November 24, 2003, the date PCX filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>3</sup> 15 U.S.C. 78f(b)(4).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 19b-4(f)(2).