

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39413; File No. SR-PCX-97-37]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. Relating to Market Maker Outside Trading Accounts

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 September 9, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On October 31, 1997, the Exchange submitted Amendment No. 1³ and on November 6, 1997, the Exchange submitted Amendment No. 2⁴ to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change, as amended.

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

The Exchange is proposing to amend its rules to eliminate the current requirements of routine submission by Market Makers of information relating to non-market-maker trading accounts (or "outside" accounts). The text of the proposed rule change is available at the

Office of the Secretary, PCX, 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 self-regulatory organization 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 self-regulatory organization 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 to amend its Rule 6.39, "Securities Accounts and Orders of Market Makers." Specifically, the Exchange is amending Rule 6.39(a) regarding the identification of accounts, to eliminate the need for routine submission by Market Makers of information on non-market-maker trading accounts or "outside accounts." Currently, Exchange Market Makers are required to identify and report to the Exchange all accounts in which the Market Maker may engage in stock, option and securities trading, directly or indirectly, or over which it has investment discretion. The Rule in its current form is broad enough to require Market Makers to report professional trading accounts held at clearing firms, as well as outside personal accounts such as brokerage accounts. The rule change will require Market Makers to report outside account information only when requested by the Exchange. The Exchange also proposes amending Rule 6.39(b) regarding the reporting of Market Maker orders. Currently, each Market Maker is required to report to the Exchange every order entered into by that Market Maker within the specifications of the Rule. The Exchange proposes amending Rule 6.39(b) to require the clearing firm that maintains the Market Maker's trading account, rather than the Market Maker personally, to report executed order information to the Exchange. The Exchange believes it is appropriate to limit the required order information to "executed" orders only, based upon its position that only marginal surveillance benefits are derived from gathering

unexecuted order information on a routine basis.

Under the proposal, the Market Maker will be held responsible for the reporting requirements only if the clearing firm is not reporting executed order information to the Exchange and/or if the Exchange has requested that the Market Maker provide the information. Furthermore, the proposed rule change will clarify that this reporting requirement applies to all accounts carried for Market Makers who are the subject of a clearing firm Letter of Guarantee issued to the Exchange pursuant to Rule 6.36.

The clearing firm thus will be the primary source for the reporting of Market Maker-executed order information to the Exchange. However, all firms that represent and execute market-maker orders will continue to be responsible for maintaining and retaining executed and unexecuted order information as required by Rules 17a-3 and 17a-4 under the Act and by Exchange Rule 6.68.

Finally, in an effort to improve reporting and move toward electronic reporting in the future, the Exchange proposed to eliminate from Rule 6.39(b) the existing description of specific order information required to be reported.⁵

2. Statutory Basis

The basis under the Act for the proposed rule change is the Section 6(b)(5)⁶ requirement that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The PCX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

⁵ This provision states that the report pertaining to orders must include the terms of each order, identification of the brokerage firms through which the orders were entered, the times of entry or cancellation, the time report of execution were received and, if all or part of the order was executed, the quality and execution price. The Exchange will continue to require the reporting of this information, but pursuant to a Regulatory Circular. See Amendment No. 2, *supra* note 4.

⁶ 15 U.S.C. § 78f(b)(5).

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Michael D. Pierson, Senior Attorney, PCX to David S. Sieradzki, Attorney, SEC, dated October 29, 1997 ("Amendment No. 1"). Amendment No. 1 clarifies what types of transactions the clearing firm must report to the Exchange under Rule 6.39(b). In addition, Amendment No. 1 adds language to Rule 6.39(b) that requires Market Makers to report executed orders, upon the request of the Exchange, in instances where the clearing firm does not report executed orders.

⁴ See letter from Michael D. Pierson, Senior Attorney, PCX to David S. Sieradzki, Attorney, SEC, dated November 5, 1997 ("Amendment No. 2"). In Amendment No. 2, the Exchange represents that it will issue a regulatory circular to Members and Member Firms stating that all of the specific order information currently contained in Rule 6.39(b) will continue to be required to be reported pursuant to the Rule. In addition, the Exchange acknowledges that if it seeks to eliminate the required reporting of any specific information, such a change would require a rule filing pursuant to Section 19(b) of the Act. Finally, Amendment No. 2 makes a minor, non-substantive change to the Rule.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission 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, and, in particular, with the requirements of Section 6(b) of the Act.⁷ Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)⁸ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.⁹

The Commission believes that the PCX's proposal to allow market-makers to provide outside account information upon request by the Exchange rather than providing such information on a routine basis is a reasonable revision to the Exchange's market-maker account reporting procedures. This conclusion is based on the Exchange's representation that outside account information provides little benefit to the Exchange's surveillance programs unless special circumstances exist. The Commission believes that the ability of the Exchange to request outside account information upon request should help preserve the Exchange's ability to conduct adequate surveillance.

The Commission believes that PCX's proposal to make a Market Maker's clearing firm the primary responsible source for reporting market-maker executed order information to the Exchange is a reasonable means of streamlining the order reporting process. Accordingly, the proposed change should result in more effective and efficient reporting of market-maker accounts and executed order information to the Exchange, thus promoting just and equitable principles of trade, perfecting the mechanism of a free and open national market system, and furthering investor protection and the public interest.

The Commission believes it is appropriate to limit the required submitted order information to "executed" orders only, based on PCX's representation that only minimal surveillance benefits are gained by gathering unexecuted order information on a routine basis. Where the clearing

firm is not reporting the information to the Exchange and if the Exchange requests that the market-maker provide the information, the market-maker will be responsible for reporting executed order information. Moreover, while the clearing firm is the primary source for the reporting of market-maker executed order information, the firms representing and executing market-maker orders will continue to be responsible for maintaining and retaining executed and unexecuted order information pursuant to Rules 17a-3¹⁰ and 17a-4¹¹ of the Act and Exchange Rule 6.68. These provisions offer further assurance that executed order information will be reported and records of executed and unexecuted orders will be maintained.

The Commission believes that the PCX's proposal to eliminate the existing description of specific order information required to be reported pursuant to Rule 6.39(b)¹² will provide the Exchange with greater flexibility in adding reporting requirements as needed. The Commission notes that the Exchange has agreed to issue a regulatory circular to its members reflecting that all of the specific order information currently contained in Rule 6.39(b) will continue to be required to be reported pursuant to the Rule.¹³ If the PCX in the future seeks to eliminate the required reporting of any of the specific information, such a change would require the submission of a rule filing pursuant to Section 19(b) of the Act.¹⁴

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposal, as amended, is virtually identical to a proposal by the Chicago Board Options Exchange approved by the Commission on February 13, 1997, following a full notice period during which no comments were received.¹⁵

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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-97-37 and should be submitted by January 6, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-PCX-97-37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39409; File No. SR-PTC-97-04]

Self-Regulatory Organizations; Participating Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Conform PTC's Rules to the Revised Articles 8 and 9 of the Uniform Commercial Code of the State of New York

December 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 10, 1997, the Participants Trust Company ("PTC") 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 primarily by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁶ 15 U.S.C. § 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

⁷ 15 U.S.C. § 78f(b).

⁸ 15 U.S.C. § 78f(b)(5).

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

¹⁰ 17 CFR 240.17a-3.

¹¹ 17 CFR 240.17a-4.

¹² See *supra* note 5.

¹³ See Amendment No. 2, *supra* note 4.

¹⁴ *Id.*

¹⁵ See Securities Exchange Act Release No. 38286 (Feb. 13, 1997), 62 FR 8287 (Feb. 24, 1997) (order approving File No. SR-CBOE-96-70).