

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46360; File No. SR-PCX-2002-49]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Amending PCX Rule 6.82(d)(2) in Order to Change the Percentage of Guaranteed Participation Afforded to Lead Market Makers

August 15, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on July 25, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 proposes to amend PCX Rule 6.82(d)(2) in order to change the percentage of guaranteed participation afforded to Lead Market Makers ("LMMs").

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

#### PACIFIC EXCHANGE, INC.

#### RULES OF THE BOARD OF GOVERNORS

Rule 6.82(a)-(c)—No change.

(d) Rights of Lead Market Makers:

(1)—No change.

(2) Guaranteed Participation. [Except as provided in subsections (A) and (B), below,] LMMs shall be allocated [50%] 40% participation (or such lesser percentage as the Options Allocation Committee may establish as a condition in allocating an issue to an LLM) in transactions occurring at their disseminated bids and/or offers in their allocated issue(s). LMM participation may be greater than [50%] 40% as a result of successful competition by means of "public outcry." LMMs at their own discretion may direct some or all of their participation to competing public orders in the crowd. Public orders placed in the book shall take priority pursuant to Exchange rules.

Oversight and enforcement shall be the responsibility of the OBO.

[(A) Multiply-traded Issues. If the average daily trading volume in a multiply-traded issue reaches 3,000 contracts at the Exchange during any three-calendar-month period (measured on a "rolling" three-calendar-month basis), and if:]

[(i) in the case of an issue traded by two options exchanges, the Exchange's monthly share of the total multi-exchange customer trading volume in the issue drops from above 70% to below 70%; or]

[(ii) in the case of an issue traded by three or more options exchanges, the Exchange's monthly share of the total multi-exchange customer trading volume in the issue drops from above 45% to below 45%; the Options Allocation Committee will evaluate the LMM's performance in that issue and, based on that evaluation, may reduce the LMM's guaranteed participation in that issue from 50% to 40%.]

[(B) Non multiply-traded Issues. If the average daily trading volume in a non-multiply-traded issue reaches 3,000 contracts at the Exchange during any three-calendar-month period (measured on a "rolling" three-calendar-month basis), the Options Allocation Committee will evaluate the LMM's performance in that issue and, based on that evaluation, may reduce the LMM's guaranteed participation in that issue from 50% to 25%.]

[(C) Return to Previous Levels of Guaranteed Participation. If the Options Allocation Committee has reduced an LMM's guaranteed participation in an issue pursuant to subsections (A) or (B) above, and average daily trading volume in the issue falls below 3,000 contracts at the Exchange during any three-calendar-month period (measured on a "rolling" three-calendar-month basis), the Options Allocation Committee will evaluate the LMM's performance in that issue and, based on that evaluation, may raise the LMM's guaranteed participation in that issue from 40% to 50% (in a multiply-traded issue) or from 25% to 50% (in a non-multiply-traded issue).]

#### 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

Currently, Exchange rules provide that LMMs may be allocated a maximum guaranteed participation of 50% in transactions occurring at their disseminated bid or offer.<sup>3</sup> The Exchange has assessed guaranteed participation levels of other exchanges<sup>4</sup> in relation to its own rules<sup>5</sup> and determined that, in establishing a fair and orderly market, it is appropriate to decrease the LMM guaranteed from 50% to 40%. The Exchange also believes it is desirable to continue to grant the Options Allocation Committee ("OAC") the discretion to allocate less than 40% guaranteed participation on a case-by-case basis as a condition of allocating an issue to an LMM.<sup>6</sup>

The proposed rule also eliminates PCX Rules 6.82(d)(2)(A)-(C), which relate to guaranteed participation for LMMs with respect to multiply-traded and non multiply-traded issues. According to the Exchange, these rules were designed to measure LMM performance and allow the OAC to take

<sup>3</sup> See PCX Rule 6.82(d)(2). The Rules of the PCX require that transactions of LMMs and Market Makers ("MMs") constitute a course of dealing that is reasonably calculated to contribute to the maintenance of a fair and orderly market. In furtherance of that goal, the Exchange has always required LMMs and MMs to make markets in options transactions and provide liquidity to the Exchange. LMMs have additional responsibilities that include, *inter alia*, the obligation to (1) assure that the disseminated market quotations are accurate; (2) determine formulas for generating automatically updated quotations and disclosing the elements of the formula to the members of the trading crowd; (3) be present at the trading post throughout every business day; (4) participate at all times in the automated execution system for each assigned option issue; (5) promote the exchange as a marketplace by assisting in meeting and educating market participants; and (6) maintain sufficient cash or liquid asset position.

<sup>4</sup> Each of the other four options exchanges provides a tiered structure that guarantees specialists no more than 40% participation where there is more than one member on parity with the specialist's best bid or offer. See Chicago Board Options Exchange, Inc. Rule 8.87; Philadelphia Stock Exchange, Inc. Rule 1014(g); American Stock Exchange LLC Rule 950(d), Commentary .05; International Stock Exchange, Inc. Rule 713, Supplementary Material .01.

<sup>5</sup> See, e.g., PCX Rule 6.47(b) (limiting LMM guaranteed participation in facilitation trades to 40%).

<sup>6</sup> See Securities Exchange Act Release No. 45937 (May 15, 2002), 67 FR 36283 (May 23, 2002) (approving SR-PCX 2002-13 to allow the OAC to establish, as a condition in allocating an issue to an LMM, a lesser guaranteed percentage).

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

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

market share into consideration when determining to reduce an LMM's guaranteed participation percentage in a particular issue. However, the Exchange believes that the process articulated in the rule is overly complicated and no longer serves its intended use, especially in light of this proposed rule to decrease guaranteed participation levels from 50% to 40%.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of section 6(b)(5),<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and 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 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 foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4<sup>10</sup> thereunder because the Exchange has designated the proposed rule change as one that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will permit the Exchange to promptly decrease the LMM guaranteed from 50% to 40%, affording Market Makers a greater opportunity to interact with orders and thereby enhancing competition on the Exchange. For these Commission designates the proposal to be become operative immediately.<sup>11</sup>

## 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 Exchange. All submissions should refer to File No. SR-PCX-2002-49 and should be submitted by September 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-21320 Filed 8-20-02; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>11</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

## DEPARTMENT OF STATE

### Bureau of Consular Affairs

[Public Notice 4103]

### Registration for the Diversity Immigrant (DV-2004) Visa Program

**ACTION:** Notice of registration for the Diversity Immigrant Visa Program.

This public notice provides information on how to apply for the DV 2004 Program. This notice is issued pursuant to 22 CFR 42.33(b)(2) which implements sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(I) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1151(a)(3) and (e), 1153(c), and 1154(a)(1)(I)).

### Entry Procedures for Immigrant Visas To Be Made Available in the DV Category During Fiscal Year 2004

Entries for DV-2004 must be received at one of the Kentucky Consular Center Mailing Addresses listed in this Notice between noon on Monday, October 7, 2002 and noon on Wednesday, November 6, 2002. Entries received before or after these dates will be disqualified regardless of when they are postmarked. Entries mailed to any address other than the Kentucky Consular Center addresses listed in this notice will be disqualified.

### How Are Visas Apportioned?

Visas are apportioned among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and no visas going to countries sending more than 50,000 immigrants to the U.S. in the past five years. Within each of the six regions, no one country may receive more than seven percent of the available Diversity Visas in one year. By law, the U.S. Diversity Visa Program makes available a maximum of 55,000 each year. However, the Nicaraguan and Central American Relief Act (NACARA) stipulates that beginning as early as DV-99 and for as long as necessary, 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA Program. This reduction began in DV-1999 and remains in effect for DV-2004.

For DV-2004, natives of the following are not eligible to apply because they sent more than 50,000 immigrants to the United States in the previous five years:

Canada  
China (mainland-born)  
Colombia  
Dominican Republic  
El Salvador  
Haiti

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).