

2005.⁵ The Commission received no comments on the proposal.

After careful review, 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 self-regulatory organization.⁶ In particular, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Act⁷ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-NASD-2005-106) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52720; File No. SR-PCX-2005-120]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Remote Market Makers

November 2, 2005.

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 October 21, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A)

of the Act,³ 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

The PCX proposes to amend PCX Rule 6.35 by eliminating the restriction contained in PCX Rule 6.35(h)(4) that prohibits a Remote Market Maker ("RMM") from concurrently trading and/or quoting the same option issue as an RMM who is a Nominee of the same OTP Firm. The text of the proposed rule change is set forth below. Additions are in italics and deletions are in brackets.

Rules of the Pacific Exchange, Inc., Rule 6 Options Trading—Appointment of Market Makers

Rule 6.35 (a) thru 6.35(g)—No Change
(h) If an OTP Holder or OTP Firm has two or more Nominees that are registered as Remote Market Makers, then:

(1) The number of OTPs held in the name of such Remote Market Makers may be aggregated for the purpose of determining the number of options issues eligible for primary appointment pursuant to subsection (g)(2) above;

(2) The primary appointment applies to the OTP Holder or OTP Firm, subject to the approval of the Exchange; and

(3) The distribution of the option issues within the primary appointments for each Remote Market Maker will be at the discretion of the OTP Holder or OTP Firm.; and

(4) At no time will a Remote Market Maker concurrently trade or quote the same option issue as a Remote Market Maker or Lead Market Maker who is a Nominee for the same OTP Holder or OTP Firm.]

(i)—No Change
Commentary: .01 thru .05—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 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

PCX Rule 6.35 governs the appointment of Market Makers. The rule change would eliminate PCX Rule 6.35(h)(4), which prohibits two or more RMMs who are Nominees of the same OTP Firm from concurrently trading options in the same class.

The current restriction on RMMs that are from the same OTP Firm concurrently trading the same issues was included as part of Amendment No. 2 to PCX-2002-36,⁵ (Rules of PCX Plus). This restriction grew out of early concerns over trade allocation and the possibility that an OTP Firm could unfairly game the "size pro rata" allocation method that PCX Plus utilizes. It was thought that having multiple RMMs in the same issue, quoting smaller individual markets, could somehow cause a greater contract allocation than a single RMM quoting the same aggregate size market. PCX Rule 6.76, Priority and Order Allocation Procedures, governs trade allocations for trades executed on the PCX Plus System. Specifically, PCX Rule 6.76(a)(4) outlines the Size Pro Rata Allocation. By reviewing this rule, one can see that the PCX allocation method is based strictly on the market size that Market Makers are quoting at the time of a trade. A single Market Maker quoting one size would be entitled to no more or no less than two or more Market Makers quoting the same aggregate size. Due to the fact that trade allocations are based strictly on quote size, and not the number of quoters, the Exchange believes that PCX Rule 6.76(h)(4) is obsolete and serves no purpose.

Some PCX OTP Firms are large businesses that have multiple Nominees that pursue separate and distinct trading strategies, and each of these Nominees may be interested in serving in an RMM capacity. Under present PCX rules, each OTP Firm is limited to allowing only one RMM to trade a particular options issue, regardless of the number of Nominees the firm may employ. By eliminating the current restriction on affiliated RMMs, these individual Nominees will be able to concurrently trade the same options issue. The

⁵ See Securities Exchange Act Release No. 52515 (September 27, 2005), 70 FR 57638 (October 3, 2005).

⁶ The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 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).

⁵ See Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003).

Exchange believes that additional market participants will create deeper markets, allowing for better executions and better prices for all customers. In this regard, the PCX proposes to no longer prohibit multiple Nominees of an OTP Firm from concurrently trading as RMMs in the same option issue.

2. Statutory Basis

For the above reasons, the Exchange believes that the proposed rule change would enhance competition. The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade and 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 Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6)⁹ 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. The PCX provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change.

The Exchange has requested that the Commission accelerate the operative date so that the proposed rule change may take effect upon filing. The Commission believes that acceleration of the operative date will permit more RMMs to trade the same options issue, which should increase liquidity in the market thereby allowing for better executions and better prices for customers. For these reasons, the Commission finds it consistent with the protection of investors and the public interest to accelerate the operative date of the proposed rule change so that it may become operative immediately upon filing.¹⁰

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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2005-120 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303. All submissions should refer to File Number SR-PCX-2005-120. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2005-120 and should be submitted on or before December 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52745; File No. SR-Phlx-2005-64]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change To Establish Certain Fees With Respect to Transactions Executed Through the Intermarket Trading System November 7, 2005

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 October 31, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

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

The Exchange proposes to enter into arrangements with other national

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19-4(f)(6).

¹⁰ 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).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.