acquisition, holding or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in Rule 2830 of the National Association of Securities Dealer Conduct Rules.

4. Before approving any advisory contract under Section 15 of the Act, the Board, including a majority of the Directors who are not ''interested persons,'' as defined in Section 2(a)(19), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund.

Conclusion

For the reasons stated herein, the Applicants submit that the terms of the contemplated transaction meet all of the requirements of Sections 12(d)(1)(J), 17(b) and 6(c) of the Act. Pursuant to Section 12(d)(1)(J), exemption of this transaction is consistent with the public interest and the protection of investors. Pursuant to Section 17(b), the terms of the proposed transaction are reasonable and fair and do not involve overreaching, the proposed transaction is consistent with the investment objectives and policies of each Profile Portfolio, and the proposed transaction is consistent with the general purposes of the Act. Similarly, under Section 6(c) of 3 the Act, Applicants submit that their request for an order is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Furthermore, Applicants seek relief relating to Future Profile Portfolios and Future Fixed Contracts in order to avoid incurring the expense and effort of drafting, and to relieve the Commission from the corresponding burden of reviewing, duplicative exemptive applications. Applicants submit that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47330; File No. SR–PCX–2003–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges for Options Intermarket Linkage Orders

February 6, 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 31, 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 PCX. 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

In connection with the launch of the options intermarket linkage (''Linkage''), the PCX proposes to amend its Schedule of Fees and Charges for Exchange Services in order to clarify that unless otherwise provided, executions resulting from Linkage orders will be subject to the same billing treatment as current executions.

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 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

On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage Plan'' or ''Plan'') [3] which linkage now includes participation by the five option exchanges (''Participant Exchanges'').[4] The PCX proposed to adopt new rules relating to the operation of the Linkage on September 26, 2002 and filed an amendment to the proposal on January 30, 2003. Along with all of the Participant Exchanges, the Exchange launched phase I of Linkage on January 31, 2003.

In connection with the launch of the Linkage, the Exhange seeks to clarify its Schedule of Fees and Charges for Exchange Services in order to add a provision stating that executions resulting from Linkage orders will be subject to the same billing treatment as current executions. Accordingly, executions arising from either a Principal Acting as Agent (''P/A'') Linkage order, or a Principal Linkage Order that are routed to the Exchange from other market centers will be subject to the same trade related charges assessed on market maker executions originating from the PCX. The proposal specifies that no fees will apply to Satisfaction Orders, which result after a trade-through.[5]

The Exchange does not seek to make any other changes to its Schedule of Fees and Charges for Exchange Services.

2. Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[6] in general, and Section 6(b)(4) of the Act, [7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[4] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) and 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000).

[5] Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

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 a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) thereunder.[9] Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the 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 proposal 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–05 and should be submitted by March 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13955; Notice 2]

Columbia Body Manufacturing Co.; Grant of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

We are granting the application by Columbia Body Manufacturing Co. (''Columbia'') of Clackamas, Oregon, for an exemption of three years from Motor Vehicle Safety Standard No. 224, *Rear Impact Protection.* Columbia asserted that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We published a notice of receipt of the application on December 4, 2002, asking for comments from the public (67 FR 72266).

Why Columbia Needs an Exemption

Columbia manufactures and sells a dump body type of trailer (the ''trailer'') requiring that the body's front end be lifted in order to discharge the load out of the back. The load is asphalt, used in road construction. This design of trailer generally has an overhang at the rear for funneling asphalt material into a paving machine; consequently, the trailer needs 16 to 18 inches of unobstructed clearance behind its rear wheels to hook up with the paving machine and dump its load. Standard No. 224 specifies that the rearmost surface of an underride guard to be located not more than 305mm (12 inches) from the ''rear extremity'' of the trailer.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 kg or more, including Columbia's, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards.* Columbia argued that installation of the rear impact guard would prevent its trailer from operating with the paving machine, and ''would interfere with the hook-up of the asphalt machine and dump operation of the trailer.'' Columbia averred that it ''has investigated the retrofit and modifications needed to bring our products into compliance with FMVSS 224 without success.'' We discuss below its efforts to conform in greater detail.

Columbia's Reasons Why it Believes That Compliance Would Cause It Substantial Economic Hardship and That It Has Tried in Good Faith To Comply With Standard No. 224

Columbia is a small volume manufacturer. Its average production over the past three years has been 12 trailers a year, ''none of which were asphalt paving trailers.'' Normally, it would produce 10 to 40 trailers annually. The company employs 30 people full time and has annual sales of $4–5,000,000. Columbia ''has had requests to quote on 14'' trailers and ''14 truck mounted dump boxes, bringing the total sales figure to around $750,000.00.'' Absent an exemption, Columbia ''will be unable to quote these units substantially decreasing our projected sales figures.'' Its application reflected that its cumulative net loss for the fiscal years 1998, 1999, and 2000 was $99,764. We asked Columbia to provide data on its fiscal year ending December 31, 2001, while the application was pending, and the company replied that its net loss for 2001 was $755,722.19.

Columbia asserted that it has sought manufacturers of underride guards since 1998. As a result of its search,

> We only found one English company, Quinton-Hazell that is no longer making either type, telescoping or hydraulic. Their research found that because of the expense of these two types of guards they would not be marketable. We have also investigated the work done by SRAC, located in Los Angeles, CA in the hopes that we might be able to use or modify the guards they designed for the trailers we wish to build. Neither was suitable because retracting the bumper and finding a way to keep the build up of asphalt off of any moving parts was not possible.

The company stated that it intended to continue to try and resolve the problems through continued research.

Columbia's Reasons Why It Believes That a Temporary Exemption Would Be in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

Columbia argued that an exemption would be in the public interest and consistent with traffic safety objectives because, ''our type of trailer helps state and municipal governments to produce the safe highways that are needed.'' It contemplates building less than 50 units a year while an exemption is in effect. According to Columbia, the amount of time actually spent on the road is limited because of the need to move the asphalt to the job site before it hardens.

Public Comment on the Application

We received one comment in response to our notice of December 4, 2002. The National Truck Equipment Association (NTEA) recommended granting the petition, commenting that ''the type of trailer for which Columbia Body is representing a temporary exemption is vital to the proper construction and maintenance of the