

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

The NYSE 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*

The NYSE has not solicited but has received written comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has stated that the rule will become effective 90 days following the publication in the **Federal Register** of the Commission's approval of the rule change.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2005-43 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2005-43. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2005-43 and should be submitted on or before September 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-52315; File No. SR-PCX-2005-93]**

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

August 22, 2005.

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 August 16, 2005, the Pacific Exchange, Inc. ("PCX") 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 PCX. The PCX has designated this proposal as "non-controversial" pursuant to Section

19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective immediately 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 6.82 to include an additional obligation of Lead Market Makers ("LMMs") in executing public customer orders. The text of the proposed rule change is available on the PCX's Web site (<http://www.pacificex.com>), at the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

### **I. 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 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**

The PCX proposes to amend PCX Rule 6.82(c), Obligations of Lead Market Makers, to include a requirement that LMMs address public customer orders that are not automatically executed on the PCX because there is a better price on another exchange, by either matching the best price that is being disseminated by a competing exchange or by routing the public customer order via Intermarket Option Linkage ("Linkage") for execution at any other exchange disseminating the best price.

Similar to rules at other exchanges, PCX rules do not allow for a public customer order to be executed at a price that is inferior to a price that may be available on another exchange. The intent of this rule is to give a public customer order the opportunity to obtain the best price available in the market at any given time. Using present procedures, attempting to obtain the

<sup>8</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> 15 U.S.C. 78s(b)(3)(A)(iii).

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

best possible price for the customer can be a time consuming process that could potentially result in the customer missing the best price that may have been available at another exchange.

Currently, PCX rules do not require LMMs to send public customer orders to other exchanges that cannot be executed on the PCX. In other words, currently an LMM may choose to reject a public customer order if the PCX is not quoting the NBBO, does not want to match the NBBO, and does not wish to route the public customer order away to the market that is quoting the NBBO. Under the proposal, an LMM will no longer be allowed to reject public customer orders in these circumstances; the LMM must either execute the public customer order immediately on the PCX (at the NBBO), or route the public customer order away via Linkage to the exchange displaying the best price available in the market. This additional LMM obligation would allow public customer orders initially routed to the PCX to be handled in a method that is consistent with the way public customer orders are handled at other options exchanges. Specifically, the proposed rule is consistent with Rule 803(c)(2) of the International Securities Exchange ("ISE"), and with obligations the PCX understands are imposed upon LMM equivalents in other options markets.

## 2. Statutory Basis

The PCX believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that the proposed rule change is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and 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 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 foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder<sup>8</sup> because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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. As required under Rule 19b-4(f)(6)(iii),<sup>9</sup> the PCX provided the Commission with written notice of PCX's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the filing date of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative for 30 days after the date of its filing.<sup>10</sup> However Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay, which would make the proposed rule change operative immediately. According to the PCX, by precluding LMMs from rejecting public customer orders, the proposed rule change would enable the PCX to provide a means of executing public customer orders at the best price available in the marketplace, either by matching the better price of another exchange or by routing the order to another exchange through the Linkage. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest,<sup>12</sup> because the proposed rule change is substantially similar to a rule of another exchange.<sup>13</sup> For this reason, the Commission designates that

the proposal become operative immediately.

At any time within 60 days of the filing of the 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2005-93 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2005-93. 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 Room. Copies of the filing also will be available for inspection and copying at the principal office of the PCX. 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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> See ISE Rule 803(c)(2) and Supplementary Material. See also Securities Exchange Act Release No. 48756 (November 7, 2003), 68 FR 65335 (November 19, 2003) (order approving the clarification of the obligations of primary market makers when addressing a public customer order when there is a better price displayed by another market) (SR-ISE-2003-03).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

Number SR-PCX-2005-93 and should be submitted on or before September 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

## **SMALL BUSINESS ADMINISTRATION**

### **Public Federal Regulatory Enforcement Fairness Hearing; U.S. Small Business Administration Region IV Regulatory Fairness Board**

The U.S. Small Business Administration (SBA) Region IV Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Tuesday, September 20, 2005 at 9 a.m. The meeting will take place at the Charlotte Chamber of Commerce, Belk Action Center, 330 South Tryon Street, Charlotte, NC, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Eileen Joyce in writing or by fax, in order to be put on the agenda. Eileen Joyce, Lead Business Development Specialist, SBA, North Carolina District Office, 6302 Fairview Road, #300, Charlotte, NC 28210, phone (704) 344-6787 Extension 1136; fax (704) 344-6769, e-mail: [Eileen.joyce@sba.gov](mailto:Eileen.joyce@sba.gov)

For more information, see our Web site at <http://www.sba.gov/ombudsman>.

**Matthew K. Becker,**

*Committee Management Officer.*

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**BILLING CODE 8025-01-M**

## **SMALL BUSINESS ADMINISTRATION**

### **Public Federal Regulatory Enforcement Fairness Hearing; U.S. Small Business Administration Region I Regulatory Fairness Board**

The U.S. Small Business Administration (SBA) Region I Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Thursday, September 29, 2005, at 9 a.m. The meeting will take place at the Warwick Public Library, 600 Sandy Lane,

Warwick, RI to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Normand Deragon in writing or by fax, in order to be put on the agenda. Normand Deragon, Public Information Officer, SBA, Rhode Island District Office, 380 Westminster Street, 5th Floor, Providence, RI 02903, phone (401) 528-4576, fax (401) 528-4539, e-mail: [Normand.deragon@sba.gov](mailto:Normand.deragon@sba.gov).

For more information, see our Web site at <http://www.sba.gov/ombudsman>.

**Matthew K. Becker,**

*Committee Management Officer.*

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## **SOCIAL SECURITY ADMINISTRATION**

### **Privacy Act of 1974 as Amended; Computer Matching Program (SSA/ Office of Personnel Management (OPM))—Matches 1005, 1019, 1020, 1021**

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of the renewal of an existing computer matching program which is scheduled to expire on October 6, 2005.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces the renewal of an existing computer matching program that SSA is currently conducting with OPM.

**DATES:** SSA will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The renewal of the matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefax to (410) 965-8582 or writing to the Associate Commissioner, Office of Income Security Programs, 745 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Associate Commissioner for Office of

Income Security Programs as shown above.

## **SUPPLEMENTARY INFORMATION:**

### **A. General**

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100-503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

### **B. SSA Computer Matches Subject to the Privacy Act**

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: August 23, 2005.

**Martin H. Gerry,**

*Deputy Commissioner for Disability and Income Security Programs.*

### **Notice of Computer Matching Program, Social Security Administration (SSA) With the Office of Personnel Management (OPM)**

#### **A. Participating Agencies**

SSA and OPM.

#### **B. Purpose of the Matching Program**

This matching program will have four separate components. The purposes of each of these parts are as follows:

<sup>14</sup> 17 CFR.200.30-3(a)(12).