

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39818; File No. SR-PCX-98-12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., Relating to the Treatment of PMP Orders Generated Through the Matching of Profiles by the PCX Application of the OptiMark System

March 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 2, 1998, the Pacific Exchange ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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

PCX is filing a proposed rule change to amend its interpretation of Rule 5.32(a) "PMP-Only" of its Rules of Board of Governors so that it will clarify how PMP orders will be treated when generated from the matching of Profiles through the PCX Application of the OptiMark System ("PCX Application").³ A new commentary has been added to Rule 5.32(a) and is attached as Exhibit A.

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

PCX will modify the interpretation of its Rule 5.32(a) so that executions resulting from the operation of the PCX Application would be considered as a part of the "primary market" for the purposes of execution of orders marked "PMP." The purpose of the proposed interpretation of the rule is to respond to the SEC staff's request to clarify the Rule 5.32(a) "PMP Only." Through the addition of proposed Commentary .01, Rule 5.32(a) would be interpreted as meaning that during regular "primary" market trading hours, an order specifically marked "PMP" would receive primary market protection, which would include not only the traditional primary markets (e.g., New York markets) but also matches resulting from the PCX Application. Accordingly, executions resulting from the PCX Application may trigger the execution of an order marked "PMP Only," even if the markets in New York have not traded at that price. Similarly, a PMP order reflected into the PCX Application as a Profile, which is matched in the PCX Application and results in an execution, would require that such PMP limit order be filled, even if the price is out of range from an otherwise existing "primary" market, however defined. This would then be consistent with the overall premise that under no circumstance can a specialist accept an execution arising out of orders generated from a cycle of the PCX Application, without also executing any eligible booked orders that were put in the book before the cycle began.

The proposed rule change interpretation is consistent with the provisions of Section 6(b)(5) of the Exchange Act in that the PCX Application is a facility that is designed to promote just and equitable principles of trade and to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. In addition, the PCX believes that the proposed rule change is consistent with provisions of Section 11A(a)(1)(B) of the Exchange Act, which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

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

Within 35 days of the date of the 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 such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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, N.W., Washington, D.C. 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 in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, DC 20549. 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-98-12 and should be submitted by April 29, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1) (1982).

² 17 CFR 240.19b-4 (1991).

³ For a description of the PCX Application of the OptiMark System, see Securities Exchange Act Release No. 39086 (Sept. 17, 1997), 62 FR 50036 (Sept. 24, 1997) (Commission order granting approval for the PCX Application).

Jonathan G. Katz,
Secretary.

Exhibit A—Additions are in italics Text of Rule 5.32(a) PMP Round Lots

¶ 4279

PMP-Only

Unless otherwise designated all round lot orders in PMP stocks will be executed against primary market prices only and such orders will not be effective when the primary market is closed.

Commentary .01. During regular "primary" market trading hours, an order specifically marked "PMP" shall receive primary market protection based on the first applicable transactions in the traditional primary markets (e.g., New York Stock Exchange and American Stock Exchange) or matches resulting from the PCX Application of the OptiMark System.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39826; File No. SR-PTC-98-01]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to a Decrease in the Number of Directors

April 1, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 17, 1998, the Participants Trust Company ("PTC") 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 primarily by PTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change. The staff of the Board of Governors of the Federal Reserve System concurred with the Commission's granting of accelerated approval.²

¹ 15 U.S.C. 78s(b)(1).

² Telephone conversation with John Rudolph, Supervisory Trust Analyst, Board of Governors of the Federal Reserve Board.

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

The proposed rule change involves an amendment to PTC's by-laws to reduce the number of directors on its board from fifteen to twelve.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC 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. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.³

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will amend Section 3.2 of Article 3 of PTC's by-laws. Under the proposed rule change, the number of directors on PTC's board will be reduced from fifteen to twelve. This amendment will also reduce the number of directors in each of the three classes from five to four.

PTC believes that the decrease in the number of directors is desirable because of consolidations and shifts in the broker-dealer and banking industries and reductions in the number of PTC participants and institutions seeking representation on PTC's board. Additionally, PTC believes this rule change is desirable due to the difficulty in finding qualified individuals to serve a three-year term on the board. Because PTC's board currently has three vacancies, the decrease in director positions will neither eliminate any incumbent director nor shorten the term of any director.

PTC believes that the proposed rule change provides for the fair representation of shareholders and participants in the selection of PTC's directors and the administration of PTC's affairs and therefore that it is consistent with Section 17A(c)(3)(C) of the Act and the rules and regulations thereunder applicable to PTC.⁴

³ The Commission has modified the text of the summaries prepared by PTC.

⁴ 15 U.S.C. 78q-1(b)(3)(C).

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will impose any burden on competition.

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

PTC has not solicited and does not intend to solicit comments on this proposed rule change. PTC has not received any unsolicited written comments from participants or other interested parties.

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

Section 17A(b)(3)(C) provides that the rules of a clearing agency must provide for the fair representation of its shareholders or members and participants in the selection of directors. The Commission believes that the board of a clearing agency should be representative of its members and that no single member should dominate the board. As a result of consolidations in the industry, there is a smaller pool of qualified individuals available and willing to fill the vacancies on PTC's board. The Commission believes that PTC's reduction of the size of its board is consistent with the Act's fair representation requirements because the resized board should allow the board to more accurately reflect PTC's membership.

PTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in order that this reduction be implemented with the election of directors held at PTC's 1998 annual stockholders meeting which is scheduled for April 9, 1998. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because such approval will give PTC adequate time to send out proxy statements to participants for its April 9, 1998, annual board meeting.

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, N.W.,