

Act, is not subject to the requirements of the rule.

III. Discussion

After careful review, the Commission finds that the proposal to amend PCX Rule 2.6(e) is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, with the requirements of Section 6(b) of the Act.⁹ Specifically, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designated, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.¹⁰ The Commission also believes that the proposed rule change is consistent with the Section 6(b)(1) requirement that an exchange have the capacity to enforce compliance by its members and persons associated with its members with the Act, the rules thereunder, and the rules of the exchange.

The Commission believes that the proposed rule change is a reasonable means of streamlining the procedures designed to prevent the misuse of material, nonpublic information by PCX members. Accordingly, the proposed rule changes should result in more effective and efficient monitoring and enforcement of the PCX of compliance with Rule 2.6(e) by its members without compromising investor protection.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹¹ that the proposed rule change (SR-PCX-98-52) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40852; File No. SR-PCX-98-16]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Telephonic and Electronic Communication Devices on the Trading Floor

December 28, 1998.

I. Introduction

On March 31, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to require Exchange approval before any telephonic or electronic communications device may be used on the floor of the Exchange. The proposed rule change, including Amendment No. 1 to the proposed rule change was published for comment in the **Federal Register** on April 23, 1998.³ This order approves the proposal as amended.

II. Description of the Proposal

The Exchange is proposing to adopt new Rule 4.22, which provides that no Member or Member Organization may establish or maintain any telephonic or electronic communication between the floor and any other location, or between locations on the floor, without the prior approval of the Exchange.

The Exchange is also proposing to eliminate Options Floor Procedure Advice ("OFFPA") F-3 relating to communication access to and from the options trading floor.⁴ The Exchange

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 39881 (April 16, 1998), 63 FR 20236.

⁴ OFFPA F-3, *Communication Access To and From the Options Trading Floor*, reads as follows: Pursuant to Rule XVII, prior approval by the Exchange will be required before the installation of any form of direct private communication devices, including PT&T and Western Union voice lines and teletype or similar hard copy wire connections. Such approval will be granted only if the connection from the Options Trading Floor terminates in one of the following manners: (1) At an office of a PSE member organization. (2) At a floor facility of a PSE member organization on the Options Trading Floor of another national securities exchange, subject to the approval of that exchange. (3) At either of the Equity Trading Floor of PSE. Approval will not be granted for connections terminating at any facility of a person or organization who or which is not a member organization of PSE. Standard (non-private, non-direct) telephones may be installed on the Options Trading Floor in member organizations assigned

believes that proposed Rule 4.22 adequately replaces OFFPA F-3, which it believes is obsolete. The Exchange notes that proposed Rule 4.22 is substantially similar to Rule 220 of the American Stock Exchange ("Amex") and Rule 6.23 of the Chicago Board Options Exchange ("CBOE").⁵

The Exchange states that it is making this proposed rule change as a housekeeping measure to assure that the Exchange's rules state expressly that Members and Member Organizations must obtain prior approval before establishing or maintaining telephonic or electronic communications between the floor and other locations, or between locations on the floor. The Exchange believes that the provision will improve upon its current rules by providing its Members and Member Organizations with clear notice of the requirement for Exchange approval.

III. Discussion

The Commission finds that the proposed rule change is consistent with Section 6 of the Act⁶ and the rules and regulations thereunder. In particular, the Commission believes that the proposal is consistent with the section 6(b)(5)⁷ requirements that the rules of an exchange be 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.⁸

In determining to approve the proposal, the Commission notes that proposed Rule 4.22 is substantially similar to Amex Rule 220.⁹ Similar to Amex's Rule 220, PCX Rule 4.22 will

floor booths as desired but all requests for such installation must be directed to the Options Floor Manager for purposes of coordination. In making use of communications access to and from the Options Trading Floor members are reminded of the provisions of section 12(k) of Rule I.

⁵ Amex Rule 220 is discussed below. CBOE Rule 6.23 provides, in part, that "No member shall establish or maintain any telephone or other wire communications between his or its office and the Exchange without prior approval by the Exchange." See CBOE Rule 6.23.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78f(b).

⁹ See Securities Exchange Act Release No. 33735 (March 8, 1994), 59 FR 12015 (March 15, 1994) (order approving SR-Amex-87-33). The proposed rule differs from Amex Rule 220 in that Amex Rule 220 requires written permission while proposed Rule 4.22 does not require that permission to install a telephonic or electronic communication device on the floor of the Exchange be in writing. See Amex Rule 220.

⁹ 15 U.S.C. 78f(b).

¹⁰ In approving this proposed rule change, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

require Exchange approval prior to the installation of any form of telephonic or electronic communication on both the options and equity floors of the Exchange. Currently, pursuant to OFPA F-3, Exchange approval is required before any form of direct private communication may be installed on the options floor of the Exchange.

The Commission supports the Exchange's efforts to continue to review the substance of its rules in response to changes in market structure and technology. In regulating the PCX trading floors and devising their structure, the Commission recognizes the PCX's need to be aware of electronic and telephonic communications that are being installed on its floors. While supporting the Exchange's efforts to monitor the types of communications that are on its trading floors, the Commission expects the PCX to ensure that the rule being approved today is not used to limit access to services offered by the Exchange or applied in a manner inconsistent with sections 6(b)(5)¹⁰ and 6(b)(8)¹¹ of the Act.¹² Specifically, the Commission expects that proposed Rule 4.22 will not be interpreted in a manner that permits unfair discrimination between customers, issuers, brokers, or dealers, or imposes any unnecessary or inappropriate burden on competition, or is otherwise used to limit member access to Exchange services. Finally, the Commission notes that the PCX should not rely solely on Rule 4.22 as currently drafted to establish a broad based restriction on member communications on its trading floors. Rather, the PCX would need to develop specific rules containing clear and objective criteria on which to base such a restriction and submit that criteria for Commission review under section 19(b) of the Act.¹³

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-PCX-98-16) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(8).

¹² See e.g., *William J. Higgins*, 48 S.E.C. 713 (1987).

¹³ See e.g., Securities Exchange Act Release No. 40577 (Oct. 20, 1998), 63 FR 57721 (Oct. 28, 1998) (Order approving File No. SR-PSE-97-02); and Amex Rule 220, Commentaries .01-.04.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40840; File No. SR-PCX-98-45]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Opening Transaction Size in Flex Equity Options

December 28, 1998.

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 September 11, 1998, 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 Exchange. On October 29, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The Exchange submitted Amendment No. 2 to the proposed rule change on December 15, 1998.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal, as amended.

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

The PCX proposes to change the requirement for initiating an opening transaction in any FLEX Equity Option⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Robert Pacileo, Jr., Staff Attorney, PCX, to Joseph Corcoran, Division of Market Regulation ("Division"), Commission, dated October 29, 1998 ("Amendment No. 1"). In Amendment No. 1, the PCX proposes to define the term "Underlying Equivalent Value" for FLEX Equity Options and provides an example demonstrating the need for the proposed rule change. See also note 6, *infra*.

⁴ See Letter from Robert Pacileo, Jr., Staff Attorney, PCX, to Michael A. Walinskas, Division, Commission, dated December 14, 1998 ("Amendment No. 2"). In Amendment No. 2, the Exchange proposes to incorporate the term "Underlying Equivalent Value" into the text of the proposed rule change and to clarify the example demonstrating the need for the proposed rule change, as set forth in the purpose section below.

⁵ FLEX Equity Options are flexible exchange-traded options contracts based on equity securities. FLEX Equity Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

series that has no open interest, such that the requirement will now be the lesser of 250 contracts or the number of contracts overlying \$1 million of the underlying securities. The text of the proposed rule change is available at the Office of Secretary, the PCX, and at the Commission.

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 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 III 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 change the requirement for initiating an opening transaction in any FLEX Equity Option series that has no open interest, such that the requirement will now be the lesser of 250 contracts or the number of contracts overlying \$1 million of the underlying securities.⁶ The Commission recently approved a similar rule change for the Chicago Board Options Exchange ("CBOE").⁷

The Exchange is proposing the rule change because it believes that the current rule, which states that the minimum value size for an opening transaction shall be 250 contracts, is overly restrictive. The Exchange believes that limiting participation in FLEX Equity Options based on the number of contracts purchased may reduce liquidity and trading interest in FLEX Equity Options for higher priced equities. The Exchange believes that the value of the securities underlying the FLEX Equity Options, if set at the right limit, can also prevent the participation of investors who do not have adequate resources. The Exchange believes that

⁶ The Commission notes that under the proposal, the \$1 million of the underlying securities is defined in Amendment No. 1 as "Underlying Equivalent Value." The definition reads: "[t]he term 'Underlying Equivalent Value' in respect of a given number of FLEX equity options is calculated by multiplying the number of contracts times the multiplier (100) times the stock price."

⁷ See Securities Exchange Act Release No. 40451 (September 18, 1998) 63 FR 51393 (September 25, 1998) (order approving File No. SR-CBOE-98-21).