

9/10 examination for supervisory persons whose duties do not include the supervision of options or municipal securities sales activity.<sup>9</sup> In an effort to establish reciprocal qualification standards, NASD is proposing to accept the Series 9/10 examination in lieu of the Series 24 examination for associated persons who are required to register and qualify as Series 24 principals with NASD, provided that such persons pass the newly-developed Series 23 qualification examination in addition to passing the Series 9/10 examination.

Pursuant to section 15A(g)(3) of the Act,<sup>10</sup> which requires NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, NASD has developed the Series 23 examination program to establish that persons associated with NASD members who have passed the Series 9/10 examination and who are seeking to register and qualify with NASD as Series 24 principals have attained specified levels of competence and knowledge.

The Series 23 examination is a limited qualification examination that covers those subject matters that are covered on the Series 24 examination, but not included on the Series 9/10 examination. The Series 23 examination program tests a candidate's knowledge of securities industry rules and regulations pertaining to the supervision of investment banking, securities markets and trading, as well as financial responsibility requirements. A committee of industry representatives that oversees the Series 24 examination program, together with NASD staff, compared the subject matters covered on the Series 9/10 and Series 24 examinations to determine the topics that should be extracted from the Series 24 examination to create the Series 23 examination program. The committee, including NASD staff, developed the selection specifications, study outline, and question bank for the Series 23 examination.

The Series 23 examination will be divided into five topical sections. The topical sections and the number of questions designated to each such section are as follows: Supervision of Investment Banking Activities (25); Supervision of Trading and Market Making Activities (29); Supervision of Brokerage Office Operations (16); Sales Supervision, General Supervision of Employees, Regulatory Framework of

NASD (19); and Compliance with Financial Responsibility Rules (11). The selection specifications for the Series 23 examination, which NASD has omitted from this filing and has submitted with a request for confidential treatment under separate cover to the Commission's Secretary pursuant to Rule 24b-2 under the Act,<sup>11</sup> describe additional confidential information regarding the examination.

The Series 23 examination will be a 2½-hour, 100-question examination with 70% as the passing score.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of sections 15A(b)(6)<sup>12</sup> and 15A(g)(3) of the Act,<sup>13</sup> which authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

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

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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

Because the foregoing 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, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

At any time within 60 days of the filing of the 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.

<sup>11</sup> 17 CFR 240.24b-2.

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</sup> 15 U.S.C. 78o-3(g)(3).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

## 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 NASD. All submissions should refer to file number SR-NASD-2003-91 and should be submitted by July 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48029; File No. SR-PCX-2002-25]

### **Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Pacific Exchange, Inc., To Eliminate the Lead Market Maker Concentration Limit of 15% of the Issues Traded on the Exchange's Options Floor**

June 13, 2003.

On April 22, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to eliminate the concentration limit for the number of issues that a Lead Market Maker ("LMM") on the Exchange may be allocated. Notice of the proposed rule change was published

<sup>9</sup> See Securities Exchange Act Release No. 46631 (October 9, 2002), 67 FR 64187 (October 17, 2002) (SR-NYSE-2002-24) (approval order).

<sup>10</sup> 15 U.S.C. 78o-3(g)(3).

<sup>16</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.

for comment in the **Federal Register** on May 9, 2003.<sup>3</sup> No comments were received on the proposed rule change.

Current PCX Rule 6.82 requires the Options Allocations Committee ("OAC") to allocate option issues to LMMs based on an overall evaluation of such factors as a candidate's adequacy of capital, operational capacity, support personnel, trading crowd evaluations and history of adherence to Exchange rules and securities laws. However, absent extraordinary circumstances, no LMM may be allocated more than 15% of the number of issues traded on the options floor.

The Exchange now proposes to eliminate this fixed concentration limit. Instead, PCX would add the number and quality of issues already allocated to an LMM to the list of factors considered by the OAC. Additionally, PCX would adopt a guideline requiring the OAC to consider the concentration of an LMM's issues if an event or proposal would cause the LMM to meet either of the following criteria: (i) The number of issues allocated to it (and any affiliated LMM) is 25% or more of the total number of issues traded on the PCX; or (ii) the volume in the issues allocated to it (and any affiliated LMM) is 50% or more of the total volume of the PCX or 25% or more of the total volume in equity option issues of the PCX. If an LMM met either of these criteria, the guideline would require the OAC to evaluate whether the event or proposal would result in an unacceptable level of concentration. If so, the OAC could exercise its discretion and take action to lower the resulting level of concentration or to deny the subject proposal. The OAC would also retain the discretion to review an LMM's level of concentration at any time, regardless of whether the above criteria are met.

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 national securities exchange.<sup>4</sup> Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,<sup>5</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect

the mechanism of a free and open market, and to protect investors and the public interest.

The Commission has previously noted that PCX's concentration limits serve the purpose of minimizing the disturbance to a fair and orderly market that might otherwise result from the failure of an LMM.<sup>6</sup> However, as the Commission has also noted, other exchanges do not impose specified mandatory limits on the number of options that may be allocated to specialists.<sup>7</sup> The Commission believes that the approach proposed by PCX is similar to one employed by the Chicago Board Options Exchange ("CBOE"). Like the proposed PCX Rule and Guidelines, CBOE Rule 8.84 and Regulatory Guideline 99-135 do not impose a mandatory cap on the number of issues that may be allocated to a Designated Primary Market-Maker ("DPM"). Instead, the CBOE guideline provides that a review with the relevant committee may be triggered when, *inter alia*, the number of classes allocated to a DPM is 25% or more of the total number of classes traded on CBOE. The Commission believes that it is permissible for the PCX to adopt a similar approach. The Commission further believes that the proposed rule changes should provide PCX with an appropriate degree of regulatory flexibility, and allow it to compete more effectively with other exchanges. At the same time, the proposal should preserve the Exchange's ability to minimize the risks associated with potential LMM failures.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-PCX-2002-25) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48028; File No. SR-PCX-2003-26]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes in Marketing Fees

June 13, 2003.

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 May 30, 2003, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the PCX has prepared. 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 is proposing to change its marketing fee for certain options and to adopt new marketing fees for recently listed options. The text of the proposed change is available at 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 had 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

###### Purpose

The PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from \$0 to \$1.00 per contract on a per issue basis.<sup>3</sup> The PCX segregates the funds from this fee by trading post and makes

<sup>3</sup> See Securities Exchange Act Release No. 47795 (May 5, 2003), 68 FR 25074.

<sup>4</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

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

<sup>6</sup> See Securities Exchange Act Release No. 42583 (March 28, 2000), 65 FR 17689 (April 4, 2000).

<sup>7</sup> *Id.* at 17690; Chicago Board Options Exchange Rule 8.84, Regulatory Guideline 99-135; American Stock Exchange Rule 26, Interp. 03.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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> See Securities Act Release No. 44830 (September 21, 2001), 66 FR 49728 (September 28, 2001) (PCX-2001-37).