the perception of bias that may have occurred when a majority of the panel members in the same line of business as the respondent was not precluded from serving on such panel. Similarly, the Commission believes that the proposed changes to allow recently retired members and employees of members to serve on the Hearing Board and to allow non-NYSE employees to serve as Hearing Officers should enlarge the pool of individuals with the requisite expertise to hear and adjudicate cases and with the ability to readily serve during regular business hours, thereby potentially allowing cases to be resolved more expeditiously. Moreover, the Commission notes that the proposal specifies that, in any disciplinary proceeding involving activities on the floor of the Exchange, no more than one person on the Hearing Panel shall have been active on the floor of the Exchange, which also is intended to reduce the perception of bias in the Exchange's disciplinary process.

In addition, the Commission believes that the Exchange's proposal to expand the Hearing Officer's authority to handle stipulations and uncontested cases, procedural and evidentiary matters, and substantive legal motions is designed to expedite the hearing process by allowing the Hearing Officer to resolve efficiently certain matters that currently require action by the full Hearing Panel. The Commission notes that, according to the Exchange, these motions often involve legal issues that the Hearing Officer is best suited to resolve.

Finally, the Commission believes that the Exchange's proposal to require that the filing of charges be made with the Hearing Board at the time they are served on the respondent will allow the Hearing Board to immediately assume jurisdiction of the matter and to be able to expeditiously schedule hearings, as well as rule on pre-hearing motions.

Accelerated Approval of Amendment No. 3

The Commission finds good cause to approve Amendment No. 3 to the proposed rule change, as amended, prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[13] Amendment No. 3 clarifies that the Exchange intends to implement the proposed rule change, as amended, on or about April 1, 2006. The Commission notes that the Exchange has represented that it will issue an Information Memo to alert its members of the proposed rule change and its implementation date which is scheduled to occur on or about April 1, 2006.[14]

Specifically, the Commission finds that Amendment No. 3 provides clarification to members and other appropriate parties of the intended implementation date of the proposed changes to the Exchange's disciplinary procedures that are contained in Article IX of the Exchange's Constitution and NYSE Rules 475 and 476 and raises no new issues of regulatory concern. For these reasons, the Commission believes that good cause exists to accelerate approval of Amendment No. 3.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Sections 6(b)(1), 6(b)(5), and 6(b)(7) of the Act.[15]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSE–2005–37) and Amendments No. 1 and 2 thereto are approved, and that Amendment No. 3 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–674 Filed 1–20–06; 8:45 am]

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[13] 15 U.S.C. 78s(b)(2).

[14] Telephone conversation between Peggy Kuo, Chief Hearing Officer, NYSE, and Cyndi N. Rodriguez, Special Counsel, Division of Market Regulation, Commission, on January 11, 2006.

[15] 15 U.S.C. 78f(b)(1), 15 U.S.C. 78f(b)(5), and 15 U.S.C. 78f(b)(7).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53133; File No. SR–PCX–2005–135]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Exposure of Orders in the PCX Plus Crossing Mechanism

January 17, 2006.

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 December 22, 2005, 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

The PCX is proposing to decrease the exposure period in its Crossing Mechanism from ten seconds to three seconds. 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.

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 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

PCX rules provide that a PCX Broker may not facilitate orders or cross two orders, using the Crossing Mechanism of the PCX Plus System (''PCX Plus'' or ''System''), unless it enters into the System the terms of each order that is to be included as part of a Cross Order,[3] pursuant to PCX Rule 6.76(c)(2)(A). Both facilitation crosses and non-facilitation crosses are executed in the same manner in PCX Plus. Upon entry into PCX Plus, the System will evaluate the terms of the Cross Order and, after accepting the Cross Order, will execute the cross in accordance with PCX Rule 6.76(c)(2)(B). Among other conditions, Rule 6.76(c)(2)(B) requires a ten-second exposure period in which OTP Holders and OTP Firms may enter orders to trade against the side of the Cross Order that has been designated as the Exposed

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

[2] 17 CFR 240.19b–4.

[3] *See* PCX Rule 6.76(c)(1)(A), which defines Cross Order for the purposes of PCX Rule 6.76(c) as ''two orders with instructions to match the identified buy-side with the identified sell-side at a specified price (the ''Cross Price'').''

Order.[4] It is this portion of the Crossing Mechanism rule that the PCX proposes to change. The PCX believes that establishing a three-second exposure period within the PCX Plus Crossing Mechanism would be consistent with the three-second exposure period that was recently approved for use at the International Securities Exchange (''ISE'') in SR–ISE–2004–04.[5]

The Exchange proposes to shorten the duration of the exposure period contained in the rules governing the Crossing Mechanism, as set forth in PCX Rule 6.76(c)(2)(B)(i)(a) and PCX Rule 6.76(c)(2)(B)(ii)(b),[6] from ten seconds to three seconds. This shortened exposure period is fully consistent with the electronic nature of the System. All market participants on the PCX utilize electronic trading systems that monitor all updates to the PCX market, including changes resulting from orders being entered into the Crossing Mechanism, and can automatically respond based upon pre-set parameters. In this all-electronic environment, it is not necessary to provide an exposure time sufficiently long to permit a person to manually respond to an updated market in order to provide the opportunity for crowd interaction. Thus, an exposure period of three seconds will permit exposure of orders on the PCX in a manner consistent with the Exchange's electronic market.

By reducing the exposure period from ten seconds to three seconds the PCX believes that OTP Holders and OTP Firms will be able to provide liquidity to their customers' orders on a timelier basis, thus providing investors with more speedy executions. Timely and accurate executions are consistent with the principles under which PCX Plus was developed. Reducing the exposure period to three seconds will also allow the PCX to remain competitive with the ISE, which has already received approval to reduce its exposure period to three seconds.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. In particular, the proposed rule change will provide investors with more timely execution of their options orders, while ensuring that there is an adequate exposure of all crossing orders in the PCX marketplace.

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

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

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 PCX consents, the Commission will:

(A) By order approve such proposed 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. 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*. Please include File Number SR–PCX–2005–135 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–PCX–2005–135. 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 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 Number SR–PCX–2005–135 and should be submitted on or before February 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

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[4] *See* PCX Rule 6.76(c)(1)(D), which defines ''Exposed Order'' as follows: ''the buy or sell side of a Cross Order that has been designated by a PCX Broker as the side to be exposed to the market and that is eligible for execution against all trading interest. Public Customer orders will always be deemed to be the Exposed Order in a Cross Order. In the case of a Cross Order involving a non-customer on both the buy side and sell side, the PCX Broker must designate one side of the Cross Order as the Exposed Order.''

[5] *See* Securities Exchange Act Release No. 52711 (November 1, 2005), 70 FR 67508 (November 7, 2005) (order approving a reduction in the exposure time under ISE Rule 716).

[6] PCX Rules 6.76(c)(2)(B)(i) and 6.76(c)(2)(B)(ii) govern the execution of Cross Orders when the Cross Price is between the Best Bid and Offer (''BBO'') and when it is at the BBO, respectively.

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).