stocks'' with the phrase ''equity securities'' in the definition. When the definition was originally drafted, the term ''common stock'' was intended to be interpreted broadly enough to include other equity securities such as ADRs.[4] The substitution of the term ''equity securities'' will make it clear that stock fund shares includes interests in entities holding portfolios or buckets of equity securities other than common stocks.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of transactions in stock fund options by eliminating any potential ambiguity as to the definition of ''stock fund shares.''

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

OCC 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

No comments on the proposed rule change were solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i)[6] of the Act and pursuant to Rule 19b–4(e)(1)[7] promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such 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.

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, NW., Washington, DC 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–98–15 and should be submitted by February 24, 1999.

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

Margaret H. McFarland,

Deputy Secretary.

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[4] The intention to cover ADRs was apparent in the original filing which approved a rule change permitting OCC to issue, clear, and settle options on unit investment trust interests and investment company shares that hold portfolios or baskets of common stock. The filing noted that underlying stock fund shares would include World Equity Benchmark Shares (''WEBs''). WEBs represent interests in funds whose holdings consist of or include ADRs. Securities Exchange Act Release No. 40132 (June 25, 1998), 63 FR 36467 [File No. SR–OCC–97–02].

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(e)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40980; File No. SR–PCX–98–55]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Relating to Crossed Market Adjustments

January 26, 1999.

I. Introduction

On November 5, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to 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 clarify its rules on the automatic execution of options orders. Amendment No. 1 was submitted to the Commission on November 30, 1998.[3] The proposed rule change was published for comment in the **Federal Register** on December 9, 1998.[4] The Commission did not receive any comments on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The Exchange proposes to clarify its rules on the automatic execution of orders when the PCX market and the market of a competition exchange are crossed or locked (*i.e.,* the bid disseminated through the facilities of one exchange is higher than or equal to the offer disseminated through the facilities of another exchange. The Exchange believes the proposal will make consistent the handling of electronic orders in such circumstances.

On September 8, 1998, the Commission approved a PCX proposal to amend PCX Rule 6.87(d) regarding the automatic execution of options orders.[5] The rule change provided that the Exchange's Options Floor Trading Committee (''OFTC'') may designate electronic orders in an option issue to receive automatic executions at prices reflecting the National Best Bid or Offer (''NBBO''). The rule change further provided that the OFTC may designate a customer order to exit the automatic execution system and receive floor broker representation in the trading crowd if the NBBO is crossed (*e.g.* 6⅛ bid, 6 asked) or locked (*e.g.* 6 bid, 6 asked).

After the Commission approved the amendment to PCX Rule 6.87(d), the Exchange became aware that the rule implied that the OFTC could designate an option issue for floor broker representation in crossed or locked markets only if the issue was eligible to receive automatic execution at the NBBO. The Exchange's intention was to allow OFTC the discretion to designate orders in an option issue for floor broker representation if the NBBO is crossed or

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

[2] 17 CFR 240.19b–4.

[3] The proposed rule change was originally filed pursuant to Section 19(b)(3)(A)(ii) of the Act. The amendment converted the proposed rule change to a filing pursuant to Section 19(b)(2) of the Act. Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX to Kelly McCormick, Attorney, Division of Market Regulation, SEC, dated November 27, 1998 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 40734 (December 1, 1998), 63 FR 67971 (December 9, 1998).

[5] Securities Exchange Act Release No. 40412 (September 8, 1998), 63 FR 49626 (September 16, 1998) (File No. SR–PCX–98–27).

locked, regardless of whether the orders are eligible for automatic execution at the NBBO. Accordingly, the Exchange is now proposing to amend PCX Rule 6.87 to clarify that the OFTC may designate customer orders, for any option issue, to default to floor broker representation in the trading crowd if the NBBO is crossed or locked, regardless of whether the Exchange's Auto-Ex system is set to execute orders at prices reflecting the NBBO.

The Exchange stated that the proposal should prevent customer orders from being executed at inferior prices. The Exchange illustrated this potential problem as follows. If the PCX market is 5 bid, 5¼ asked, and exchange B's market is 4 bid, 4¼ asked, the NBBO would be 5 bid, 4¼ asked. If the 5 bid is based on a public order for 10 contracts, and the order is automatically executed, the customer would be deprived of an opportunity to cancel the order at 5 and buy 10 contracts at exchange B at 4¼. This result would occur regardless of whether the PCX Auto-Ex system is using the NBBO or PCX quotes.

The Exchange also explained that in many cases crossed or locked markets occur because of communications or systems problems, or due to keystroke errors, or quotation dissemination delays. The Exchange stated that it believes that the proposal allow floor brokers to determine if the locked or crossed market is actually a true market. The Exchange stated that it plans to implement a systems change to accommodate the potential for floor broker representation of options orders during crossed or locked markets after this proposal is approved.

III. Discussion

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.[6] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.[7]

Section 6(b)(5) of the Act[8] requires, among other things, that the rules of an exchange be designed to facilitate transactions in securities and, in general, to protect investors and the public interest. The proposed rule change should protect customer orders from being executed at inferior prices. Currently if the NBBO is crossed or locked, a customer's order could potentially be executed at an inferior price. If an order is placed for an option issue that is not eligible for automatic execution at the NBBO, the order would be automatically executed at a price that may be inferior to a price listed on another market. The proposed amendment to PCX Rule 6.87 would prevent this situation from occurring. The customer order would default to the PCX floor brokers who would then handle that order consistent with their best execution obligations.

The proposed rule change provides floor brokers with the opportunity to determine if the crossed or locked markets are true markets. As explained by the Exchange, a locked or crossed market may be caused by external factors unrelated to the option issue. The default provision will allow floor brokers to ascertain whether the crossed or locked market is in fact a true market, before assessing what the best execution would be for a particular customer's order.

Accordingly, the Commission believes the proposed rule change will facilitate transactions when markets are crossed or locked and will protect investors and the public interest consistent with the requirements of Section 6(b)(5) of the Act.[9]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PCX–98–55) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[6] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

[8] *Id.*

[9] *Id.*

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40959; File No. SR–PCX–98–65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Rescission of Fee Assessment for New Facilities

January 22, 1999.

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 January 15, 1999, 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 PCX.[3] 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 proposing to rescind the special assessment that was approved in January 1998. The assessment, which applied to each of the 552 PCX memberships, was intended to provide an equity base to fund new facilities to house the Exchange's new trading floor, technology facilities, associated office space and equipment.

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

In its filing with the Commission, PCX included statements concerning the purpose of, and basis for, the fee 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. PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

[2] 17 CFR 240.19b–4.

[3] The filing was submitted January 4, 1999, however, the PCX amended the filing after it was submitted. Therefore the effective date of the filing is January 15, 1999. *See* letter from Robert P. Pacileo, Staff Attorney, PCX, to Mike Walinskas, Deputy Associate Director, SEC, dated January 14, 1999.