of securities to hedge option series that have one-dollar strike intervals has unintentionally become more restrictive.

The proposed rule change will remove the two-dollar standard exercise price interval limitation for listed options and the definition of ''in-or-at-the-money.'' As proposed, Rule 431(f)(2)(J) would require permitted offset transactions be effected for specialist or market-making purposes such as hedging, risk reduction, rebalancing of positions, liquidation, or accommodation of customer orders, or other similar specialist or market-making purposes, while prohibiting trading in an underlying security that is not related to specialist or market making option activities, or that does not constitute a reasonable hedge.

Since clearing firms have risk monitoring systems that alert them to unhedged positions and haircut requirements pursuant to Rule 15c3–1[13] of the Exchange Act[14] perform a similar function as NYSE margin requirements relative to providing adequate risk coverage to broker-dealers, the Exchange believes that the elimination of the two-dollar standard exercise price limitation and definition of ''in-or-at-the-money'' will not diminish the ''safety and soundness'' protections that Rule 431 provides.

2. Statutory Basis

The basis for the proposed rule change is the requirement under section 6(b)(5)[15] of the Exchange Act that the rules of the Exchange be designed 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. In addition, section 6(b)(5) of the Exchange Act requires the rules of an exchange to foster cooperation and coordination with persons engaged in regulating transactions in securities.

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 Exchange Act

[13] 17 CFR 240.15c3–1.

[14] 15 U.S.C. 78a.

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

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the 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, as amended, 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–NYSE–2004–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2004–39. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–NYSE–2004–39 and should be submitted on or before December 1, 2005.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 05–22454 Filed 11–9–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52719; File No. SR–PCX–2005–73]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Establishment of a Portfolio Crossing Service on the Archipelago Exchange

November 2, 2005.

I. Introduction

On June 7, 2005, 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'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish an after-hours Portfolio Crossing Service (''PCS''). The PCX filed Amendment No. 1 to the proposed rule change on September 14, 2005.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on September 28, 2005.[4] The Commission received no comments from the public in response to the proposed rule change. This order

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 52472 (September 20, 2005), 70 FR 56762.

approves the proposed rule, as amended.

II. Description

The PCX, through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE''), proposed to establish the PCS, a new transaction and trade reporting mechanism for Equity Trading Permit Holders (''ETP Holders'')[5] to allow the execution and reporting of portfolio trades in equity securities on the Archipelago Exchange (''ArcaEx''). In order to use PCS, ETP Holders would input a basket of individual cross orders, each with a basket number identifier tying it to the other orders in the basket. These baskets of individual cross orders would not interact with other orders residing in the Arca Book.[6] Each side of an individual coupled order in a basket entered into PCS would execute without regard to the priority of other orders entered into PCS.

To be eligible for PCS, orders must be part of a basket of individual cross orders comprised of at least 15 securities and with a total market value of at least $1,000,000.[7] All symbols eligible for trading on ArcaEx would be eligible for trading on PCS. If a basket of orders meets the standards as set forth in proposed Rule 7.65, the basket would be referred to as a ''PCS Order.'' Each individual component of a PCS Order must be appended with a basket number identifier tying it to the other order components of the PCS Order. This identifier would be used to distinguish the individual components of any PCS Order from an ordinary Cross Order[8] destined for ArcaEx.

ETP Holders would be able to enter PCS Orders at any time during the Exchange's trading day.[9] When the Exchange receives a PCS Order, it would hold such order until the end of trading, currently 5 p.m. Pacific Time. All PCS Orders received during any particular trading day would be executed simultaneously in PCS at least one minute after the close of trading on the Exchange, but in no event later than 8:59 p.m. Pacific Time. Each individual order component of a PCS Order would not interact with other PCS Orders or other orders residing in the Arca Book in any way. Furthermore, trading halts occurring during the normal market hours in one or more individual stocks would not affect the execution of PCS Orders. However, if there is a market-wide halt in a symbol that remains in effect at 1 p.m. Pacific Time, the Exchange would halt trading in such symbol through its PCS.

The Exchange would handle trade reporting for PCS executions in one of two different ways, depending on whether a particular PCS component execution involved exchange-listed or Nasdaq-listed securities. With respect to exchange-listed securities, the system would calculate the total shares and total dollar amounts[10] of all exchange-listed symbols executed in PCS on any particular trading day. The Exchange would then transmit this total as an administrative message over the high speed line to The Securities Industry Automation Corporation (''SIAC'').[11] The Exchange would not consolidate the exchange-listed volume attributable to PCS with the volume in those securities occurring in the non-PCS trading session occurring on ArcaEx. With respect to Nasdaq-listed securities, the Exchange would report symbols individually to Nasdaq as regular transactions as of the following morning.[12]

All PCS executions, whether exchange-listed or Nasdaq securities, will be ''covered sales'' occurring on the Exchange for the purposes of Section 31 of the Act.[13] The Exchange will report PCS activity to the Commission in Part II of Form R31 under the Act.

In addition, the Exchange has requested exemptive relief from the requirement in Rule 11Aa3–1 under the Act[14] that the Exchange disseminate on a consolidated basis trading volume for each of the component securities executed on the Exchange's PCS. In addition, the Exchange has requested clarification from the Commission with respect to the application of Rule 10a–1 under the Exchange Act and Regulation SHO.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposal, as amended, is consistent with the provisions of Section 6(b)(5) of the Act,[16] which requires, among other things, that a national securities exchange's rules be designed to prevent fraud and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the establishment of PCS appears to be reasonably designed to promote a free and open market and the national market system by offering ETP Holders the opportunity to enter crossing portfolio orders to be executed against each other following the conclusion of the ArcaEx Late Trading Session.[17] The establishment of the PCS also appears to be reasonably designed to enhance order execution opportunities on ArcaEx by providing investors and ETP Holders with greater opportunities for executing large portfolio trades.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–PCX–2005–73), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–22415 Filed 11–9–05; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* PCXE Rule 1.1(n).

[6] *See* PCXE Rule 1.1(a).

[7] *See* proposed PCXE Rule 7.65(a)(4)(a) for definition of ''PCS Order.''

[8] *See* PCXE Rule 7.31(s).

[9] The New York Stock Exchange's Crossing Session II (''NYSE CS II'') is another after hours session which allows member firms the ability to cross a portfolio of orders. The NYSE CS II, however, does not accept orders until after the close of regular trading.

[10] Since shares and dollar amounts will be calculated on a aggregate basis, volume and price information will not be available at an individual security level.

[11] ArcaEx represented that it would coordinate with SIAC to ensure it would be able to receive messages from ArcaEx reflecting aggregate PCS executions. *See infra* note 14.

[12] Nasdaq is the securities information processor for Nasdaq-listed securities. Section 11 of the Nasdaq Unlisted Trading Privileges Plan deals with trade reporting for Nasdaq securities after 6:30 p.m. Eastern Time.

[13] 15 U.S.C. 78ee.

[14] The Commission notes that Rule 11Aa3–1 has been redesignated as Rule 601 of Regulation NMS. 17 CFR 242.601.

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

[16] 15 U.S.C. 78f(b)(5).

[17] *See* PCXE Rule 7.34(a)(3).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).