

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49681; File No. SR-PCX-2003-51)

May 11, 2004

Self-Regulatory Organizations; Notice of Filing and Amendments No. 1, 2, and 3 thereto of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Conditions of PCX Membership

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 October 29, 2003, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On December 18, 2003, the Exchange filed Amendment No.1.³ On March 15, 2004, the Exchange filed Amendment No. 2.⁴ On April 23, 2004, the Exchange filed Amendment No. 3.⁵ The Commission is publishing this notice to solicit comments, as amended, on the proposed rule change from interested persons.

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

¹ 15 U.S.C. 78s(b)(1).

² CFR 240.19b-4.

³ See Letter from Steven B. Maitlin, Regulatory Policy, Pacific Exchange, Inc., to Nancy Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated December 17, 2003 (“Amendment No. 1”). Amendment No. 1 replaced the originally filed proposal in its entirety.

⁴ See Letter from Steven B. Maitlin, Regulatory Policy, Pacific Exchange, Inc., to Nancy Sanow, Assistant Director, Division, Commission, dated March 12, 2004 (“Amendment No. 2”). Amendment No. 2 replaced Amendment No. 1 in its entirety.

⁵ See Letter from Steven B. Maitlin, Regulatory Policy, Pacific Exchange, Inc., to Nancy Sanow, Assistant Director, Division, Commission, dated April 22, 2004 (“Amendment No. 3”). Amendment No. 3 replaced Amendment No. 2 in its entirety.

The PCX proposes to amend its rules regarding the Exchange's conditions to membership. Specifically the Exchange proposes to (1) modify rules relating to PCX administered examinations for Floor Brokers and Market Makers; and (2) adopt a rule permitting waiver of the examination requirements by the Membership Committee. The text of the proposed rule change appears below. New text is italicized, and deleted text is in brackets.

Rules of the Board of Governors of the Pacific Exchange, Inc.

Rule 1 Memberships

Denial of and Conditions to Membership

Rule 1.7(b) (1 – 8) – No change.

(9) does not successfully complete [such written proficiency] examinations as required by the Exchange to [enable it to examine and] verify the applicant's qualifications to function in [one or more of the] capacities covered by the application [applied for];

Series 7 Requirement for Off-Floor Traders

(A) All [T] traders of member organizations for which the Exchange is the Designated Examining Authority ("DEA") must successfully complete the General Securities Registered Representative Examination Test, Series 7, [if the primary business of the member organization involves the trading of securities that is unrelated to the performance of the functions of a registered specialist, a registered market maker or a registered floor broker. The following are exempt from the requirement to successfully

complete the Series 7 Examination: Exchange members who] except for individuals who are performing the function of a [registered specialist,] registered market maker (pursuant to Rule 6.33), [or] registered floor broker (pursuant to Rule[s 5.27(a), 6.33 or] 6.44[, respectively]) and associated persons of member firms who facilitate the execution of stock transactions for the accounts of options market makers.

For purposes of this Rule:

(i) The term "trader" means a person who is directly or indirectly compensated by an Exchange member organization and who trades, makes trading decisions with respect to, or otherwise engages in the proprietary or agency trading of securities; and

(ii) The term "primary business" means greater than 50% of the member organization's business.

(B) Each member organization for which the Exchange is the DEA must complete, on an annual basis, and on a form prescribed by the Exchange, a written attestation as to whether the member organization's primary business is conducted in the performance of the function of a registered specialist, a registered market maker or a registered floor broker (pursuant to Rules 5.27(a), 6.33 or 6.44, respectively).

(C) The requirement to complete the Series 7 Examination will apply to current Traders of member organizations that meet the criteria of subsection (A), above, as well as to future Traders of member organizations that meet the criteria of subsection (A), above, at a later date. Traders of member organizations that meet the criteria of subsection (A), above, at the time of SEC approval of this Rule, must successfully complete the Series 7 Examination within six months of notification by the Exchange.]

Rule 1.7(b)(10 – 12) – No change.

Rule 1.7(c)

Prior to admission to the trading floor or participation on any trading system, all applicants are required to complete an Exchange Orientation Program. The Membership Committee may waive [or modify] a required examination [for any applicant if,] under the following conditions:

(1) [within two years of the date such applicant applied to the Exchange for membership, such] an applicant for registration as a Market Maker pursuant to Rule 6.33 [has] must have successfully completed the Series 44 Examination within five years of the application date for Exchange membership and the applicant must have been a member of the Exchange within six months of the application date for Exchange membership. [a comparable examination administered by a self-regulatory organization or the Securities and Exchange Commission.]

(2) an applicant for registration as a Floor Broker pursuant to Rule 6.44 must have successfully completed the Series 45 Examination within five years of the application date for Exchange membership and the applicant must have been a member of the Exchange within six months of the application date for Exchange membership.

(3) an applicant for Exchange membership must have successfully completed an equivalent examination administered by a self-regulatory organization within five years of the application date for Exchange membership and the applicant must have been a member of any self-regulatory organization within six months of the application date for Exchange membership.

(4) in the opinion of the Membership Committee, appropriate basis for an exemption from a required examination exists based on the following standards of evidence regarding an applicant's qualifications:

(A) length and quality of securities industry experience or professional experience in investment related fields;

(B) specific registration requested by the applicant and type of business to be conducted in relation to the applicant's experience;

(C) previous registration history with the Exchange and nature of any pre-existing regulatory matters; and

(D) other examinations (e.g., Series 7 Examination) taken by the applicant that may be acceptable substitutes in conjunction with securities industry experience.

Within fifteen calendar days after the Membership Committee meets to review a request for a waiver of the examination requirement, the Membership Committee shall provide the applicant with a written determination of whether the waiver was granted or denied. If the Membership Committee denies the request for a waiver, the notice shall include a statement with the reasons for the denial. An applicant whose request for a waiver is denied may appeal the decision of the Membership Committee in accordance with the terms and conditions of Rule 11.7.

Rule 1.7d – f [c – e] – No change.

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 Purpose

1. Purpose

The PCX reviewed its examination requirements for Floor Brokers and Market Makers relative to those of other options exchanges. In doing so, the PCX believes that its current membership testing requirements are more restrictive than the requirements of other exchanges.⁶

Therefore, the Exchange is proposing to amend its Rule 1.7(b) and 1.7(c). The proposed rules will extend the time period when a former member of the PCX or another self-regulatory organization may have taken an examination from two years to five years so long as the applicant has been a member of an Self-Regulatory organization within six months of the application date for Exchange membership.⁷ In addition, the proposal allows the Membership Committee to waive the examination requirement if the Committee believes the applicant is qualified based upon the applicant's industry experience, the type of registration requested, the previous history of the applicant with the PCX and any other examinations the applicant has successfully completed that may be considered acceptable substitutes. The proposed changes will bring the PCX

⁶ According to PCX, the following SROs place no restriction on the amount of time within which an applicant must have successfully completed an examination to be eligible for membership: the Philadelphia Stock Exchange (See Rule 620(a) & (b)), the American Stock Exchange (See Rule 353) and the Boston Stock Exchange (See Rule Chapter 15, Section (1)(b)(3)). In addition, NASD Rule 1070 permits the NASD to grant waivers of applicable qualification examinations. The PCX proposal requires that an applicant have successfully completed an examination within five years and have been a member of an SRO within six months of applying for PCX membership. The PCX Membership Committee may waive the examination requirement for individuals who have not successfully completed an examination within five years and/or have not been a member of an SRO within six months of applying for PCX membership, but only if the applicant is deemed qualified based upon a list of very specific criteria.

⁷ To determine whether the proposed rule applies to a particular applicant, the PCX will first review whether the applicant has been a member of an SRO within six months of applying for PCX membership. If the applicant has been a member of an SRO within six months of applying for PCX membership, then the PCX will review whether the applicant has passed an appropriate examination within five years of the application date for Exchange membership.

examination requirements up to date and make the PCX's requirements similar to those at other SROs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5),⁹ in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

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 Act.

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

Written comments on the proposed rule change were neither solicited nor received.

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

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78(b)(5).

date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization 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, 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 e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2003-51.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2003-51. 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 the 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-2003-51 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jill M. Peterson
Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(29).