

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49757; File No. SR-PCX-2004-28)

May 21, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and by the Pacific Exchange, Inc. to Amend Rules Relating to FOCUS Report Filings

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 14, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), 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 Exchange. The PCX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the PCX under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 Exchange is proposing to amend PCXE Rule 4.11(b)(1) relating to late filings of Financial and Operational Combined Uniform Single ("FOCUS") Reports. The text of the proposed rule change is set forth below. Proposed new language is in italics and proposed deletions are in brackets.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 79s(b)(3)(A)(ii).

Rule 4.11(a). – No change.

Rule 4.11(b)(1). Each ETP Holder shall file with the Corporation a Report of Financial Condition on SEC Form X-17A-5 as required by Securities and Exchange Commission Rules 17a-5 and 17a-10. Any ETP Holder who fails to file such Report of Financial Condition in a timely manner shall be subject to late filing charges as follows:

<b><u>Occurrence</u></b>	<b><u>Number of Days</u></b>	<b><u>Amount of Charge</u></b>
<u>1<sup>st</sup></u>	1-30	<u>\$100.00 per day (capped at \$500)</u> [200.00]
	31-60	<u>\$750.00</u> [400.00]
	61-90	<u>\$1000.00</u> [800.00]
<u>2<sup>nd</sup></u>	<u>1-30</u>	<u>\$100.00 per day (capped at \$1000)</u>
	<u>31-60</u>	<u>\$1500.00</u>
	<u>61-90</u>	<u>\$2000.00</u>
<u>3<sup>rd</sup></u>	<u>1-30</u>	<u>\$2000.00</u>
	<u>31-60</u>	<u>\$2500.00</u>
	<u>61-90</u>	<u>\$3000.00</u>

Occurrences will be calculated on a running two-year basis. Repeated or aggravated failure to file such Report of Financial Condition or failure to file such report [for more than ninety days will] may be referred to the Enforcement

Department [Ethics and Business Conduct Committee] for appropriate disciplinary action.

Rule 4.11(b)(2) – 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 Exchange 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 Exchange 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

The Exchange is proposing to amend PCXE Rule 4.11(b)(1) relating to late filings of FOCUS Reports to implement a higher late charge schedule.

Currently, PCXE Rule 4.11(b)(1) requires ETP (“Equity Trading Permits”) Holders to file with the Exchange a FOCUS Report as set forth in SEC Rules 17a-5 and 17a-10. ETP Holders who fail to file such a FOCUS Report in a timely manner are subject to late filing charges. If an ETP Holder is late 1-30 days, the late fee is \$200; for 31-60 days, the late fee is \$400; and for 61-90 days, the late fee is \$800.

The Exchange proposes to amend PCXE Rule 4.11(b)(1) to reflect a higher late charge schedule. For a first occurrence, an ETP Holder who is 1-30 days late in filing a FOCUS Report will be charged \$100 per day (capped at \$500); for 31-60 days, the ETP

Holder will be charged \$750; and for 61-90 days, the ETP Holder will be charged \$1000. For a second occurrence, an ETP Holder who is 1-30 days late will be charged \$100 per day (capped at \$1000); for 31-60 days, the ETP Holder will be charged \$1500; and for 61-90 days, the ETP Holder will be charged \$2000. For a third occurrence, an ETP Holder who is 1-30 days late will be charged \$2000; for 31-60 days, the ETP Holder will be charged \$2500; and for 61-90 days, the ETP Holder will be charged \$3000. Occurrences for late FOCUS Report filings will be calculated on a running two-year basis.

The Exchange will retain its flexibility to refer repeated or aggravated failure to file such reports or failure to file such reports, regardless of the number of days late, to the Enforcement Department. The Exchange believes that implementing a higher late charge schedule is necessary to convey the importance of FOCUS Reports to ETP Holders and to encourage the ETP Holders to file FOCUS Reports in a timely manner.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>5</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

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<sup>4</sup> 15 U.S.C. 78f(b).

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)<sup>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such 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.

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. Comments may be submitted by any of the following methods:

Electronic comments:

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2004-28 on the subject line.

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-2004-28. 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. 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 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-2004-28 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.<sup>8</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).

