

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50126; File No. SR-PCX-2004-45)

July 30, 2004

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Amend the PCX Sanctioning Guidelines to Enforce Compliance with the Exchange's FOCUS Reports Filing Requirements

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 May 17, 2004, 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 Exchange filed an amendment to the proposed rule change on July 1, 2004.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The PCX proposes to amend the PCX sanctioning guidelines in order to effectively enforce compliance with the Exchange's Financial and Operational Combined Uniform Single ("FOCUS") Reports filing requirements. The text of the proposed rule change is below. Proposed new language is in italics.

Rule 10.16

Pacific Exchange Sanctioning Guidelines

(a) – (e) – No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The July 1, 2004 amendment ("Amendment No. 1") replaced the original filing in its entirety.

(f) Specific Sanctioning Guidelines for Recordkeeping and Financial Requirements

Rules.

(1) Financial Reports – PCX Rule 4.11(b)(1)

(A) Principal Considerations in Determining Sanctions.

(i) See list of Principal Considerations applicable to all violations as set forth in PCX Rule 10.16(d).

(B) Monetary Sanctions.

(i) First Disciplinary Action Fine of \$1,000 to \$5,000.

(ii) Second Disciplinary Action Fine of \$2,000 to \$10,000.

(iii) Subsequent Disciplinary Action Fine of \$3,000 to \$50,000.

(iv) To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, as set forth in PCX Rule 10.16(b), recent acts of similar misconduct may be considered to be aggravating factors.

(C) Suspension, Expulsion, or Other Sanctions. For the first disciplinary action, consider a letter of caution to the named party. In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to two years. In particularly egregious cases involving a pattern of misconduct, consider expelling the OTP Holder or OTP Firm, withdrawing approval of the responsible approved person, and/or

permanently barring a named party from employment or association with any OTP Holder or OTP Firm.

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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 its proposal and discussed any comments it received regarding the proposal. 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 proposes to amend the PCX sanctioning guidelines in order to effectively enforce compliance with the Exchange's FOCUS Reports filing requirements.⁴

Currently, PCX Rule 10.16 sets forth the general principles applicable to all sanction determinations, principal considerations in determining sanctions, and specific

⁴ See PCX Rule 4.11(b)(1). OTP Holders who fail to file such FOCUS Reports in a timely manner are subject to late filing charges. For a first occurrence, an OTP Holder who is 1-30 days late in filing the FOCUS Reports will be charged \$100 per day (capped at \$500); for 31-60 days, the charge is \$750; and for 61-90 days, the charge is \$1000. For a second occurrence, an OTP Holder who is 1-30 days late will be charged \$100 per day (capped at \$1000); for 31-60 days, the charge is \$1500; and for 61-90 days, the charge is \$2000. For a third occurrence, an OTP Holder who is 1-30 days late will be charged \$2000; for 31-60 days, the charge is \$2500; and for 61-90 days, the charge is \$3000. The PCX recently increased the late charges for late filings of FOCUS Reports. See Securities Exchange Act Release No. 49756 (May 21, 2004), 69 FR 30972 (June 1, 2004) (SR-PCX-2004-27).

sanctioning guidelines for options order handling rules. The sanctioning guidelines are used by various PCX bodies that adjudicate disciplinary actions, including the Ethics and Business Conduct Committee (“EBCC”), the PCX Board of Directors, and the PCX Surveillance and Enforcement Departments, to determine appropriate remedial sanctions.

With the instant proposed rule change, the PCX proposes to establish specific sanctioning guidelines relating to disciplinary actions initiated as a result of late filings of FOCUS Reports. Currently, late filings of FOCUS Reports are handled by the assessment of late charges. While a specific late charge schedule is provided, Exchange staff also has the flexibility to refer repeated or aggravated failure to file such reports, or failure to file such reports, to the Enforcement Department. For example, Exchange staff may refer a failure to file FOCUS Reports after the first, second, or third occurrence, depending on the circumstances. Exchange staff has the responsibility to determine whether the circumstances involved are aggravated or repeated enough to warrant such failure to file FOCUS Reports to be taken out of the late charge schedule for disciplinary action. In other words, Exchange staff may refer such failures to the Enforcement Department without exhausting the late charge schedule set forth in PCX Rule 4.11(b)(1), if the circumstances warrant such action.⁵

The PCX believes the proposed guidelines will assist the Exchange in determining appropriate remedial sanctions for violation(s) of FOCUS Report filing rules. The PCX also believes the guidelines will work to promote consistency and

⁵ The late charge schedule set forth in PCX Rule 4.11(b)(1) is independent of the monetary sanctions set forth in proposed PCX Rule 10.16(f)(1)(B). Thus, whether an OTP Holder is subject to a first, second or subsequent disciplinary action, is independent of how many occurrences of late filings the OTP Holder incurred pursuant to PCX Rule 4.11(b)(1).

uniformity as each Exchange Department will use the same form and parameters set forth in the guidelines with respect to violation(s) of FOCUS Report filing. The fine amounts will differ depending on the number of disciplinary actions that have been brought by the PCX against the particular OTP Holder or OTP Firm and the Exchange will have a range of fines as well as non-monetary sanctions that could be assessed against offending OTP Holders or OTP Firms.

The PCX proposes the following monetary sanctions for disciplinary actions brought for violations of PCX Rule 4.11(b)(1):⁶

| | | |
|-------------------------------------|---|--------------------------------|
| 1 st Disciplinary Action | - | \$1,000.00 to \$5,000.00; |
| 2 nd Disciplinary Action | - | \$2,000.00 to \$10,000.00; and |
| Subsequent Disciplinary Actions | - | \$3,000.00 to \$50,000.00. |

The proposed guidelines would also allow for non-monetary sanctions such as suspension, expulsion, or other sanctions in egregious cases. The Exchange believes that the proposed fine levels will help to deter violations of its FOCUS Report filing rules. These guidelines are not intended to be absolute, and sanctions may be imposed that fall outside the ranges recommended.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section

⁶ The recommended range of fines is intended to correspond to the late filing charges set forth in PCX Rule 4.11(b)(1) yet be diverse so as to provide Exchange staff with the discretion to fine an OTP Holder at either end of the range depending on the circumstances.

6(b)⁷ of the Act, in general, and furthers the objectives of Section 6(b)(5),⁸ 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, to remove impediments to and perfect the mechanism 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 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 the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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-2004-45 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-2004-45. 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, 450 Fifth Street, NW, Washington, DC 20549. 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-2004-45 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.⁹

Margaret H. McFarland
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).