

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50231; File No. SR-PCX-2004-70)

August 23, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the PCX Equities, Inc.'s Ability to Waive an Examination Requirement for an ETP Applicant

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 August 4, 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 and II below, which Items have been prepared by the PCX. 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 PCX is proposing to adopt a rule permitting the Exchange to waive the examination requirement for an Equity Trading Permit (“ETP”) applicant if the applicant can show that an appropriate basis exists for waiving this requirement. The text of the proposed rule change is as follows:

New text is *italicized*; deleted text is in [brackets].

Rules of PCX Equities, Inc.

**Rule 2
Equity Trading Permits**

Denial of or Conditions to ETPs

¹ 15 U.S.C. 78s(b)(1).

² CFR 240.19b-4.

Rule 2.4(b) (1 – 9) – No change.

(10) does not successfully complete [such written proficiency] examinations as required by the Corporation 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

(A) Traders of ETP Holders for which the Corporation is the Designated Examining Authority ("DEA") must successfully complete the Series 7 Examination. [General Securities Registered Representative Examination (Test Series 7), if the primary business of the ETP Holder involves the trading of securities that is unrelated to the performance of the functions of a registered Market Maker. Unless required to complete the Series 7 under Rule 7.21(b)(2), the following are exempt from the requirement to successfully complete the Series 7 Examination:] ETP Holders [who are] performing the function of a registered Market Maker [(]pursuant to Rule 7.21(b)(2)[)] are exempt from this requirement.

For purposes of this Rule:

(i) The term "trader" means a person (a) who is directly or indirectly compensated by an ETP Holder, or who is any other associated person of an ETP Holder and (b) 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 ETP Holder's business.

(B) Each ETP Holder for which the Corporation is the DEA must complete,

on an annual basis, and on a form prescribed by the Corporation, a written attestation as to whether the ETP Holder's primary business is conducted in the performance of the function of a registered Market Maker (pursuant to Rule 7).]

[(C)] (B) The requirement to complete the Series 7 Examination will apply to current traders of ETP Holders that meet the criteria of subsection (A), above, as well as to future traders of ETP Holders that meet the criteria of subsection (A), above, at a later date. Traders of ETP Holders 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 Corporation.

Rule 2.4(b) (11 –13) – No change.

(c) The Corporation may waive or modify a required examination for any Trader who has been a member of a self regulatory organization within six months of applying for trading privileges under an ETP if appropriate basis for an exemption from a required examination exists based on the following standards of evidence regarding an applicant's qualifications: [for any applicant if, within two years of the date of such applicant applied to the Corporation for an ETP, such applicant has successfully completed a comparable examination administered by a self-regulatory organization or the Securities and Exchange Commission.]

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

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

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

(4) other examinations (e.g. Series 1 Examination) taken by the applicant that may be acceptable substitutes in conjunction with securities industry experience. Within fifteen calendar days after the Corporation reviews a request for a waiver of the examination requirement, the Corporation shall provide the applicant with a written determination of whether the waiver was granted or denied. If the Corporation 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 Corporation in accordance with the terms and conditions of Rule 10.13.

Rule 2.4(d – f) – No change.

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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 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

The Exchange is proposing to amend PCXE Rule 2.4(b)-(c) to allow the Exchange to waive the examination requirement for an ETP applicant if the Exchange 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 Exchange is also proposing to make certain technical

changes to PCXE Rule 2.4(b)(10) so that the Rule for ETP applicants is similar to the existing rule for individuals who apply for an Options Trading Permit (“OTP”). The Exchange believes that the proposed changes will bring the PCX examination requirements up to date and make the PCX’s requirements similar to those at other SROs.³ The Exchange notes that the proposed waiver is similar to one recently approved by the Commission for individuals who apply for an OTP at the PCX.⁴

Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5),⁶ 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

³ See Philadelphia Stock Exchange Rule 620(a) and (b), the American Stock Exchange Rule 353 and the Boston Stock Exchange Rule Chapter 15, Section (1)(b)(3).

⁴ See Securities Exchange Act Release No. 49922 (June 28, 2004), 69 FR 40701 (July 6, 2004).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78(b)(5).

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) of the Act,⁷ and subparagraph (f)(6) of Rule 19b-4,⁸ thereunder because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of the 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.

The PCX has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission believes that accelerating the operative date will permit the Exchange to implement the changes to its examination requirements without undue delay. The Commission notes that it previously approved a similar proposed rule change for options trading on PCX and therefore the instant

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

proposed rule change should not raise any new regulatory issues.⁹ Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁰

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-2004-70 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 No. SR-PCX-2004-70. 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

⁹ See Securities Exchange Act Release No. 49922 (June 28, 2004), 69 FR 40701 (July 6, 2004)(SR-PCX-2003-51).

¹⁰ For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2004-70 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.¹¹

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).