

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50312; File No. SR-PCX-2004-71)

September 3, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Regarding Rules Relating to Examinations for Floor Brokers and Market Makers and Waiver of the Examinations

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 July 19, 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 Exchange. On August 13, 2004, PCX filed Amendment No. 1 to the proposed rule change.³ On August 19, 2004, PCX filed Amendment No. 2 to the proposed rule change.⁴ Pursuant to section 19(b)(3)(A)(iii) of the Act⁵ and Rule 19b-4(f)(3) thereunder,⁶ PCX has designated this proposal as one concerned solely with the administration of the self-regulatory organization, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Steven B. Matlin, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 12, 2004 ("Amendment No. 1"). Amendment No. 1 superseded and replaced the original proposal in its entirety.

⁴ See Letter from Steven B. Matlin, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 18, 2004 ("Amendment No. 2"). Amendment No. 2 made a technical correction to the proposed rule text.

⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶ 17 CFR 240.19b-4(f)(3).

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

PCX proposes to amend and move the provisions of PCX Rule 1.7, relating to PCX-administered examinations for floor brokers and market makers and the rules permitting a waiver of the examinations, to current PCX Rule 2.5. The text of the proposed rule change is available at the Exchange and the Commission, and may be viewed on the Commission's website, at www.sec.gov/rules/sro.shtml.

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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX proposes to amend PCX Rule 1.7 to make administrative changes necessary as a result of the Exchange's change to a demutualized structure.⁷ Recently-approved changes to PCX Rule 1.7, relating to PCX-administered examinations for floor brokers and market makers and the rules permitting a waiver of the examinations, were filed by the Exchange prior to approval of the demutualized structure by the Commission.⁸ The approval order for the changes

⁷ See Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (approving File No. SR-PCX-2004-08).

⁸ See Securities Exchange Release No. 49922 (June 28, 2004), 69 FR 40701 (July 6, 2004) (approving File No. File No. SR-PCX-2003-51).

to PCX Rule 1.7, however, was issued by the Commission after the demutualized structure was approved. The approval of the demutualized PCX rules caused some of the Exchange's rules, including former PCX Rule 1.7, to be renumbered, and eliminated references to a Membership Committee. As a result of these changes, the changes approved in PCX Rule 1.7 must be modified and moved to current PCX Rule 2.5 to conform to the approved demutualized PCX Rules. The proposed rule change amends the PCX rules accordingly.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and further the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and, in general, 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 were neither solicited nor received with respect to the proposed rule change.

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)(iii) of

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

the Act¹¹ and Rule 19b-4(f)(3) thereunder¹² in that it is concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of this 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.¹³

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.

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-2004-71. 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

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(3).

¹³ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on August 19, 2004, the date PCX submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

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 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-2004-71 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.¹⁴

Margaret H. McFarland
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).