

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50677; File No. SR-PCX-2004-108)

November 16, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. to Amend the Corporate Governance Requirements for PCX Listed Companies

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 November 15, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The proposed rule change has been filed by PCX as a “non-controversial” rule change under Rule 19b-4 under the Act,³ which renders the proposal effective upon filing with the Commission.⁴ 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 Pacific Exchange, Inc. (“PCX” or “Exchange”), through its wholly owned subsidiary PCX Equities, Inc. (“PCXE”) is proposing to amend its Corporate Governance and Disclosure Policies. The proposed changes will amend certain director independence standards so that immediate family members of a director are only included in the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Id.

⁴ 17 CFR 240.19b-4(f)(6).

standards if they are executive officers of the listed company. The Exchange also proposes to allow dually listed companies to apply the independence standards of other self-regulatory organizations (“SROs”) in limited situations. The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

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**Rules of the
PCX Equities, Inc.
Rule 5
Listings**

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Corporate Governance and Disclosure Policies

Rule 5.3 – 5.3(k)(1) – No Change.

Rule 5.3(k)(1)(A) – A director who is an employee or former employee, or whose immediate family member is an executive officer, of the listed company whose employment ended within the past three years.

Rule 5.3(k)(1)(B) – (D) – No Change.

Rule 5.3(k)(1)(E) - A director who is an executive officer or an employee, or whose immediate family member is an executive officer, of a company that makes payments to, or receives payments from, the listed company for property or services in an amount which, in any single fiscal year, exceeds the greater of \$200,000 or 5% of such other company's consolidated gross revenues, is not "independent" until three years after falling below such threshold. For purposes of this rule, charitable organizations shall not be considered "companies", provided however that a listed company shall disclose in its

annual proxy statement, or if the listed company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the SEC, any charitable contributions made by the listed company to any charitable organization in which a director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year exceeded the greater of \$200,000 or 5% of such charitable organization's consolidated gross revenues. At any time, however, when an issuer has a class of securities that is listed on a national securities exchange or national securities association other than the Corporation and is subject to requirements substantially similar to those set forth in this Section 5.3(k)(1)(E) the issuer shall not be required to separately meet the requirements set forth above. Governance requirements of other markets will be considered to be substantially similar to the requirements above if they are adopted by the New York Stock Exchange or the National Association of Securities Dealers (for the Nasdaq National Market or Small Cap Market).

Rule 5.3(k)(1)(F) – A director who receives, or whose immediate family member is an executive employee who receives, more than \$100,000 per year in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service). Such director shall not be independent until three years after he or she ceases to receive more than \$100,000 per year in such compensation.

Rule 5.3(k)(1)(G) – 5.3(k)(6) – 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 self-regulatory organization 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 purpose of this rule change is to make certain modifications to the Exchange's Corporate Governance and Disclosure Policies. With regard to PCX Rule 5.3(k)(1)(A) and 5.3(k)(1)(F), the proposed changes will amend director independence standards so that immediate family members of a director are only included in the standards if they are executive officers of the listed company.⁵ The Exchange also proposes to allow, in the limited situation of Rule 5.3(k)(1)(E), dually listed companies to apply the independence standards of other SROs. The proposed changes to Rules 5.3(k)(1)(A) and 5.3(k)(1)(F) will eliminate certain inconsistencies between the Exchange's rules and those of other national securities exchanges or national securities associations. The proposed change to Rule 5.3(k)(1)(E) will allow dually listed issuers to

⁵ As revised by the proposed rule change, these provisions will be similar to Sections 303A.02(b)(i) and (b)(ii) of the NYSE Listed Company Manual. Telephone conversation between Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, and Geoffrey Pemble, Special Counsel, Division, Commission, on November 16, 2004.

apply one uniform test to determine independence of their directors regardless of how many SROs list their security.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The proposed rule change has been designated by PCX as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act⁸ and subparagraph (f)(6) of Rule

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A).

19b-4 thereunder.⁹

The foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. Furthermore, the PCX gave the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

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.

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:

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

- Use the Commission's Internet comment form
[\(<http://www.sec.gov/rules/sro.shtml>\); or](http://www.sec.gov/rules/sro.shtml)
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-PCX-2004-108 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-2004-108. 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 No. SR-PCX-2004-108 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.¹²

Margaret H. McFarland
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).