

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-51512; File No. SR-PCX-2004-124

April 8, 2005

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments Nos. 1, 2, and 3 by the Pacific Exchange, Inc. Relating to Adjournments of a Hearing Within Three Business Days of a Scheduled Hearing Session

On December 15, 2004, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change relating to amendments to PCX Rules 12.6 and 12.18 and PCX Equities, Inc. (“PCXE”) Rules 12.7 and 12.19. On February 3, 2005, PCX filed Amendment No. 1 to the proposed rule change.³ On the same day, PCX filed Amendment No. 2 to the proposed rule change, which replaced Amendment No. 1 in its entirety.⁴ On February 28, 2005, PCX filed Amendment No. 3 to the proposed rule change.⁵ The proposed rule change, as amended, was published for comment in the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter dated February 3, 2005 from Tania Blanford, Regulatory Staff Attorney, to Nancy Sanow, Assistant Director, Division of Market Regulation.

⁴ See letter dated February 3, 2005 from Tania Blanford, Regulatory Staff Attorney, to Nancy Sanow, Assistant Director, Division of Market Regulation.

⁵ See letter dated February 28, 2005 from Tania Blanford, Regulatory Staff Attorney, to Nancy Sanow, Assistant Director, Division of Market Regulation.

Federal Register on March 8, 2005.⁶ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

I. Description of Proposed Rule Change

The Exchange proposed amending PCX Rules 12.6 and 12.18 and PCXE Rules 12.7 and 12.19 to modify the arbitration adjournment provision to charge parties a fee of \$100.00 per arbitrator in the event that a hearing is adjourned within three business days of a scheduled hearing session.

The Exchange has found that parties often seek to adjourn scheduled hearing sessions at the last minute for various reasons, which may include scheduling conflicts of parties or their counsel, ongoing settlement discussions, or other personal matters unrelated to the arbitration process. Regardless, last minute adjournments result in inconvenience and lost income to the arbitrators. The Exchange, therefore, proposed charging parties a nominal fee of \$100.00 per arbitrator in the event that a hearing is adjourned within three business days of a scheduled hearing session.

The arbitrators will have discretion to allocate the fee among the requesting parties, if more than one party requests the adjournment. The arbitrators may also allocate all or a portion of the fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the adjournment. In the event that an extraordinary circumstance prevents a party or parties from making a timely adjournment request, the arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received. The fee will not

⁶ Exchange Act Rel. No. 51296 (March 2, 2005), 70 FR 11304 (March 8, 2005).

apply to the adjournment of a pre-hearing session. It will, however, apply if the parties agree to settle their dispute and one or more parties makes an adjournment request within three business days before a scheduled hearing session. This will be considered to be an adjournment request that is made and granted for purposes of proposed PCX Rule 12.18 and PCXE Rule 12.19.

The Exchange stated that it believes this fee is reasonable in order to compensate arbitrators for their inconvenience due to last minute adjournments.

II. Discussion and Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange⁷ and, in particular, the requirements of Section 6 of the Act⁸ and the rules and regulations thereunder.

Specifically, the Commission finds that the proposal is consistent with Section 6(b)⁹ of the Act, in general, and Section 6(b)(5)¹⁰ of the Act, in particular, in that it will promote just and equitable principles of trade and protect investors and the public interest by encouraging arbitrators to agree to serve in PCX arbitration proceedings. The proposal is

⁷ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

also consistent with Section 6(b)(4)¹¹ of the Act in that it provides for the equitable allocation of reasonable charges among PCX members and other persons using the PCX arbitration forum.

The Commission believes that the proposed rule change will promote just and equitable principles of trade by providing PCX with an effective means of addressing the problems associated with last minute adjournments. The rule change should discourage frivolous adjournment requests while promoting more efficient use of the arbitration process by encouraging parties, when appropriate, to settle their disputes early to avoid additional fees. Compensating arbitrators for their inconvenience due to last minute adjournments should help PCX maintain a pool qualified arbitrators by assuring arbitrators of some compensation in the event that a scheduled hearing is adjourned at the last minute. In sum, the Commission believes that, by providing a more efficient and effective forum for investors to address grievances, the proposed rule change will serve to protect investors and the public interest. Moreover, the Commission believes that the proposed rule change will provide for the equitable allocation of the new adjournment fee among PCX members and other persons using the PCX arbitration forum, and that the new fee is reasonable.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

¹¹ 15 U.S.C. 78f(b)(4).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-PCX-2004-124) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland
Deputy Secretary

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).