

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52513; File No. SR-PCX-2005-106)

September 27, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Rescinding Pilot Rules Relating to the Waiver of the California Ethics Standards for Neutral Arbitrators in Contractual Arbitration and Section 1281.92 of the California Code of Civil Procedure

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 20, 2005, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by PCX. PCX has designated this proposal as “non-controversial” pursuant to Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective immediately upon filing with the Commission. 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

PCX is proposing to amend the PCX Options and PCX Equities, Inc. (“PCXE”) arbitration rules to rescind the pilot rules (the “Pilot Rules”) relating to the waiver of the California Ethics Standards for Neutral Arbitrators in Contractual Arbitration (the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

“California Standards”) and the waiver of California Code of Civil Procedure Section 1281.92 (“CCCP Claims”). The text of the proposed rule change is available on the PCX’s Web site (<http://www.pacificex.com>), at the PCX’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

1. Purpose

The purpose of the proposed rule change is to rescind the Pilot Rules relating to the waiver of the California Standards and the CCCP Claims.

Effective July 1, 2002, the California Judicial Council adopted the California Standards,<sup>5</sup> which contain extensive disclosure and disqualification requirements for arbitrators. The California Standards imposed disclosure and disqualification requirements on arbitrators that conflict with the disclosure requirements of the PCX and PCXE. Because PCX and PCXE could not administer its arbitration program in accordance with its own rules and comply with the new California Standards at the same time, the PCX initially suspended the appointment of arbitrators.

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<sup>5</sup> California Rules of Court, Division VI of the Appendix.

In November 2002, PCX implemented the Pilot Rules providing that if parties to an arbitration who are customers (or, in certain circumstances, associated persons) waived application of the California Standards to their arbitration proceeding, then the firm would be required to waive the application of the California Standards. Under such a waiver, the arbitration proceeds under existing PCX and PCXE rules, which already contains extensive disclosure requirements and provisions for challenging arbitrators with potential conflicts of interest. PCX will decline jurisdiction and dismiss and refund fees paid to PCX and PCXE by the parties for any arbitration claims in which any of the parties to arbitration fails to sign the applicable waivers.

On March 1, 2005, the United States Court of Appeals for the Ninth Circuit issued its decision in Credit Suisse First Boston Corp. v. Grunwald.<sup>6</sup> The Ninth Circuit held that the Exchange Act preempts application of the California Standards. On May 23, 2005, the Supreme Court of California also held that the Act preempts application of the California Standards.<sup>7</sup>

PCX has determined that the Pilot Rules should be rescinded prior to its expiration as they are no longer necessary. Specifically with the recent decisions in Grunwald and Jevne, both the Ninth Circuit and the California Supreme Court have found that the Act preempts the application of the California Standards. Consequently, the PCX believes that it can once again appoint arbitrators without requiring a waiver of the California Standards.

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<sup>6</sup> 400 F.3d 1119 (9th Cir. 2005).

<sup>7</sup> Jevne v. The Superior Court of Los Angeles County, S121532 (CA Sup. Ct. May 23, 2005).

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade by ensuring that Options Trading Permits Holders, Options Trading Permits Firms, Exchange Trading Permits Holders and the public have a fair and impartial forum for the resolution of their disputes.

### 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 foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder<sup>11</sup> because the proposed rule change 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

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<sup>8</sup> 15 U.S.C. 78s(b).

<sup>9</sup> 15 U.S.C. 78s(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. As required under Rule 19b-4(f)(6)(iii),<sup>12</sup> the PCX provided the Commission with written notice of PCX's 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 filing date of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative for 30 days after the date of its filing.<sup>13</sup> However Rule 19b-4(f)(6)(iii)<sup>14</sup> permits the Commission to designate a shorter time if such action is consistent with the protection investors and the public interest. 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 that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>15</sup> For these reasons, the Commission designates that the proposed rule change has become effective and operative immediately.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission

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<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include Filed No. SR-PCX-2005-106 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-9303.

All submissions should refer to File No. SR-PCX-2005-106. 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 Room. Copies of such filing will also 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-2005-106 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.<sup>16</sup>

Jonathan G. Katz  
Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).