

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 49922; File No. SR-PCX-2003-51)

June 28, 2004

Self-Regulatory Organizations; Order Approving Proposed Rule Change, and Amendments No. 1, 2, and 3 thereto, by the Pacific Exchange, Inc. Relating to Conditions of PCX Membership

On October 29, 2003, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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 to amend its rules regarding the Exchange’s conditions to membership. Specifically the Exchange proposes to: (1) modify rules relating to PCX administered examinations for Floor Brokers and Market Makers; and (2) adopt a rule permitting waiver of the examination requirements by the Membership Committee. The PCX filed Amendments No.1,³ No. 2,⁴ and No. 3,⁵ on December 18, 2003, March 15, 2004, and April 23, 2004, respectively. The proposed rule change, as amended, was published for comment in the Federal Register on May 19, 2004.⁶ The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Steven B. Maitlin, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated December 17, 2003 (“Amendment No. 1”).

⁴ See Letter from Steven B. Maitlin, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division, Commission, dated March 12, 2004 (“Amendment No. 2”).

⁵ See Letter from Steven B. Maitlin, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division, Commission, dated April 22, 2004 (“Amendment No. 3”).

⁶ See Securities Exchange Act Release No. 49681 (May 11, 2004), 69 FR 75010.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁷ and, in particular, the requirements of Section 6 and Section 15 of the Act.⁸ Specifically, Section 6(c)(3)(A) of the Act provides that a national securities exchange may deny membership to, or condition the membership of, a registered broker-dealer if any natural persons associated with the broker or dealer do not meet the standards of training, experience and competence as are prescribed by the rules of the exchange.⁹ Moreover, Section 15(b)(7)(C) of the Act provides that the Commission may rely on the registered securities associations and national securities exchanges to "require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange."¹⁰ To further the goals of Section 15(b)(7) of the Act, the Commission in 1993 adopted Rule 15b7-1,¹¹ which prohibits registered broker-dealers from effecting any transaction in, or inducing the purchase or sale of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards (including but not limited to submitting and maintaining all required forms, paying all required fees and passing any

⁷ In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f and 78g.

⁹ 15 U.S.C. 78f(c)(3)(A).

¹⁰ 15 U.S.C. 78g(b)(7)(C).

¹¹ 17 CFR 240.15b7-1.

required examinations) established by the rules of any national securities exchange of which such broker or dealer is a member.

The Commission believes that the Exchange should be able to maintain the integrity and competency of securities industry personnel in its market under the proposed rule change. The proposed rule change will extend the time period when a former member of the PCX or another self-regulatory organization (“SRO”) may have taken an examination from two years to five years if the applicant has been a member of an SRO within six months of the application date for Exchange membership. In addition, the proposal allows the Membership Committee to waive the examination requirement if the Committee 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.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change and Amendments No. 1, 2, and 3 thereto (File No. SR-PCX - 2003-51) are 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).