

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-51296; File No. SR-PCX-2004-124

March 2, 2005

Self-Regulatory Organizations; Notice of Filing of 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

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 December 15, 2004, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by PCX. 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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.

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. arbitration rules, PCX Rule 12.18 and PCXE Rule 12.19, respectively, in order to modify the arbitration adjournment provision. PCX is also proposing to amend PCX Rule 12.6 and PCXE Rule 12.7, respectively, to provide that if the parties agree to settle their dispute, they will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions and fees incurred as a result of adjournments pursuant to PCX Rule 12.18(d) or PCXE Rule 12.19(d).⁶ Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets]. Because the proposed changes to PCX Rule 12.6 and PCX Rule 12.18 are identical to the proposed changes to PCXE Rule 12.7 and PCXE Rule 12.19, only the PCX rules appear below (the PCXE rules have not been included).

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Telephone conversation between Tania Blanford, Regulatory Staff Attorney, PCX, and Lourdes Gonzalez, Assistant Chief Counsel-Sales Practices, Division of Market Regulation, SEC, February 28, 2005 regarding conforming PCX's Statement of the Terms of Substance of the Proposed Rule Change section of its Notice of Filing of Proposed Rule Change Relating to Adjournments of a Hearing Within Three Business Days of a Scheduled Hearing Session with the changes to the text of PCX Rules 12.6 and 12.18 and PCXE Rules 12.7 and 12.19 proposed by Amendment No. 2.

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Rules of the Pacific Exchange, Inc.

**Rule 12
Arbitration**

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Settlements

Rule 12.6 (a) All settlements upon any matter submitted shall be at the election of the parties.

(b) If the parties agree to settle their dispute, they will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions and fees incurred as a result of adjournments, pursuant to Rule 12.18(d).

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Adjournments

Rule 12.18 (a) – (c) – No change.

(d) If an adjournment request is made by one or more parties and granted within three business days of a scheduled hearing session, not including prehearing sessions, the party or parties making the request shall pay an additional fee of \$100 per arbitrator to compensate the arbitrator for the inconvenience due to last minute adjournments. If more than one party requests the adjournment, the arbitrators shall allocate the \$100 per arbitrator fee among the requesting parties. The arbitrators may allocate all or a portion of the \$100 per arbitrator 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 a request results in the adjournment of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from making a timely adjournment request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

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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, 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. 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

Purpose

The Exchange proposes to amend 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, proposes to charge 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 fee will not 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 12.19.⁷

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

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Telephone conversation between Tania Blanford, Regulatory Staff Attorney, PCX, and Lourdes Gonzalez, Assistant Chief Counsel-Sales Practices, Division of Market Regulation, SEC, February 28, 2005 regarding conforming PCX's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change of its Notice of Filing of Proposed Rule Change Relating to Adjournments of a Hearing Within Three Business Days of a Scheduled Hearing Session with the changes to the text of PCX Rules 12.6 and 12.18 and PCXE Rules 12.7 and 12.19 proposed by Amendment No. 2.

Basis

The Exchange believes that the proposal is consistent with Section 6(b)⁸ of the Act, in general, and Section 6(b)(5)⁹ of the Act, in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and 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 on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed modifications, or

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-PCX- 2004-124 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 Number SR-PCX-2004-124. 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 Number SR-PCX-2004-124 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

Margaret H. McFarland
Deputy Secretary