

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49417; File No. SR-PCX-2004-07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend PCX Rule 1.26 To Clarify and Update Its Registration Rule for Employees of Member Organizations

March 15, 2004.

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 February 9, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its subsidiary PCX Equities, Inc. ("PCXE"), 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 the Exchange. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6)⁴ thereunder, which renders the proposal effective upon filing with the Commission.⁵ 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 proposes to amend PCX Rule 1.26 in order to clarify PCX's registration rule for employees of Member Organizations. The text of the proposed rule is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 1: Memberships; Employees of Member Organizations

Registration

Rule 1.26(a). [Every] *Each* employee [, including branch office managers,] of a *M[em]ber O[rg]anization* [who is] compensated directly or indirectly for the solicitation or handling of business in securities, including trading in securities for the account of the *M[em]ber O[rg]anization*, [whether such securities are those dealt in on the Exchange or those dealt in over-the-counter,] must be registered with [and approved by] the Exchange.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The PCX provided the Commission with written notice of its intention to file the proposed rule change on January 30, 2004. See 17 CFR 240.19b-4(f)(6).

[The Exchange may waive compliance with the requirements of Rule 1.26(a) in the event a member organization is also a member organization of another national securities exchange having comparable requirements.]

(b) *In order to satisfy the [R]egistration requirement*, [of registered] employees [shall] *of Member Organizations must satisfy applicable examination requirements as prescribed by the Exchange, complete documentation and pay the related fees.* [be in such form as the Exchange shall prescribe and the c]Continuance of any registered employee [in that capacity shall] *is at [all times be in] the sole discretion of the Exchange.*

(i) *For employees of Member Organizations for which the Exchange serves as the Designated Examining Authority, all the requirements of subsection (b) apply;*

(ii) *For employees of Member Organizations for which the Exchange does not serve as the Designated Examining Authority, such employees shall be deemed registered with the PCX if the Member Organization has recorded the registration of such employees with the PCX via Web CRD.*

(c) The Exchange may require each applicant for employment as a registered employee to [pass such] *successfully complete* examinations as the Exchange may prescribe to establish the applicant's qualification for such registration. *The Exchange may exempt an individual from the examination requirements if such individual has successfully completed comparable examinations (e.g., Series 7 Examination).*

Rule 1.26(d)-(g)—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 its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified 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 Exchange is proposing to amend PCX Rule 1.26 in order to clarify and

update its registration rule for employees of Member Organizations.

The Exchange proposes to amend PCX Rule 1.26(a) so that the registration requirement applies to employees of Member Organizations irrespective of whether the Member Organization is a member of another national securities exchange. This amendment is necessary for the PCX to maintain a complete and accurate listing of PCX Member Organizations and their employees. The Exchange also proposes to clarify PCX Rule 1.26(b) to clearly outline that employees of Member Organizations must satisfy the applicable examination requirements as prescribed by the Exchange, complete any documentation, and pay the related fees. The Exchange also proposes to clarify the difference in the process depending on whether the PCX serves as the Member Organization's Designated Examining Authority. This is intended to prevent any ambiguity regarding the registration process. Lastly, the Exchange proposes to include in PCX Rule 1.26(c) an exemption for an individual from the examination requirements if such individual has successfully completed comparable examinations. The purpose of this provision is to avoid duplicative examinations.

The requirements for registration of employees of Member Organizations outlined above are existing requirements that are currently in place at the Exchange pursuant to PCX Rule 1.26. The Exchange currently mandates these requirements for registration and merely seeks to codify them in the Exchange rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁶ in general, and furthers the objectives of section 6(b)(5),⁷ in particular, because it is designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX 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.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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

Because the foregoing 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 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ 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.

The Exchange asked the Commission to waive the 30-day operative delay. The Commission believes such waiver is consistent with the protection of investors and the public interest. Because these proposed rules merely codify existing procedures, the proposed rule change does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

All comment letters should refer to File No. SR-PCX-2004-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 submissions should refer to file number SR-PCX-2004-07 and should be submitted by April 13, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49418; File No. SR-PCX-2004-18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Bid-Ask Differentials

March 15, 2004.

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 March 11, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the PCX. The PCX filed the proposal pursuant to Section 19(b)(3)(A) under the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the

Commission.⁵ 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 PCX proposes to amend PCX Rule 6.37, "Obligations of Market Makers," to permit the Options Floor Trading Committee ("OFTC") to establish, with respect to options trading with a bid price of less than \$2, bid-ask differentials that are no more than \$0.50 wide ("double-width") when the primary market for the underlying security: (1) Reports a trade outside of its disseminated quote (including any Liquidity Quote); or (2) disseminates an inverted quote. The double-width relief must terminate automatically when the condition that necessitated the double-width relief is no longer present. The text of the proposed rule change appears below. Additions are *italicized*.⁶

Obligations of Market Makers

Rule 6.37(a)—No change.

Rule 6.37(b)(1)(A)—(E)—No change.

(F) The OFTC may, with respect to options trading with a bid price less than \$2, establish bid-ask differentials that are no more than \$0.50 wide ("double-width") when the primary market for the underlying security: (a) Reports a trade outside of its disseminated quote (including any Liquidity Quote); or (b) disseminates an inverted quote. The imposition of double-width relief must automatically terminate when the condition that necessitated the double-width relief i.e., condition (a) or (b) is no longer present. Market makers that have not automated this process may not avail themselves of the relief provided herein (i.e. they may not manually adjust prices.)

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

⁵ The PCX has asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii).

⁶ The PCX indicated that the proposed rule should be paragraph (F) of PCX Rule 6.37(b)(1). See e-mail message from Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, to Yvonne Fraticelli, Special Counsel, Division of Market Regulation, Commission, dated March 12, 2004.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).