

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51696; File No. SR-PCX-2005-50)

May 13, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to a Pilot Rule Extension of a Waiver of California Arbitrator Disclosure Standards

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 April 12, 2005 and on May 13, 2005 (Amendment No. 1), 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange and its wholly owned subsidiary PCX Equities, Inc. (“PCXE”) are proposing to extend the pilot rule in PCX Rule 12.1(i) and PCXE Rule 12.2(h), which requires industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers (and, in industry cases, upon the request of associated persons with claims of statutory employment discrimination), for an additional six-month pilot period, until November 26, 2005.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange 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 III below. The Exchange 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

On November 21, 2002, the Commission approved, for a six-month pilot period, the Exchange's proposal to amend PCX and PCXE arbitration rules to require industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers or, in employment discrimination cases, upon the request of associated persons.³ The Commission approved an extension of the pilot period on May 15, 2003,⁴ November 19, 2003,⁵ May 24, 2004,⁶ and November 23, 2004.⁷ The pilot period is currently set to expire on May 25, 2005.

On July 1, 2002, the Judicial Council of the State of California adopted new rules that mandated extensive disclosure requirements for arbitrators in California (the

³ See Exchange Act Release No. 46881 (November 21, 2002), 67 FR 71224 (November 29, 2002) (Order approving SR-PCX-2002-71).

⁴ See Exchange Act Release No. 47872 (May 15, 2003), 68 FR 28869 (May 27, 2003) (Order approving SR-PCX-2003-22).

⁵ See Exchange Act Release No. 48806 (November 19, 2003), 68 FR 66521 (November 26, 2003) (Order approving SR-PCX-2003-61).

⁶ See Exchange Act Release No. 49758 (May 24, 2004), 69 FR 30734 (May 28, 2004) (Order approving SR-PCX-2004-25).

⁷ See Exchange Act Release No. 50731 (November 23, 2004), 69 FR 69660 (November 30, 2004) (Order approving SR-PCX-2004-104).

“California Standards”). The California Standards are intended to address perceived conflicts of interest in certain commercial arbitration proceedings. As a result of the imposition of the California Standards on arbitrations conducted under the auspices of self-regulatory organizations (“SROs”), the National Association of Securities Dealers, Inc. (“NASD”) and the New York Stock Exchange (“NYSE”) suspended the appointment of arbitrators for cases pending in California, and filed a joint complaint in federal court for declaratory relief in which they contend that the California Standards cannot lawfully be applied to NASD and NYSE because the California Standards are preempted by federal law and are inapplicable to SROs under state law.⁸ Subsequently, in the interest of continuing to provide investors with an arbitral forum in California pending the resolution of the applicability of the California Standards, the NASD and NYSE filed separate rule proposals with the Commission that would temporarily require their members to waive the California Standards if all non-member parties to arbitration have done so. The Commission approved the NASD’s rule proposal on September 26, 2002⁹ and the NYSE’s rule proposal on November 12, 2002.¹⁰ Both the NASD and the NYSE filed rule proposals to further extend the pilot period for additional six-month periods.¹¹

⁸ See Motion for Declaratory Judgment, NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc., v. Judicial Council of California, filed in the United States District Court for the Northern District of California, No. C 02 3486 SBA (July 22, 2002). For a more complete discussion of the various pending cases related to the California Standards, see Exchange Act Release No. 50971 (January 6, 2005), 70 FR 2685 (January 14, 2005) (Notice regarding SR-NASD-2004-180), Exchange Act Release No. 51213 (February 16, 2005), 70 FR 8862 (February 23, 2005) (Order approving SR-NASD-2004-180) and Exchange Act Release No. 51395 (March 18, 2005), 70 FR 15137 (March 24, 2005) (Order approving SR-NYSE-2005-14).

⁹ See Exchange Act Release No. 46562 (September 26, 2002), 67 FR 62085 (October 3, 2002) (Order approving SR-NASD-2002-126). Thereafter, the pilot period was extended to September 30, 2003. See Exchange Act Release No. 48187 (July 16, 2003), 68 FR 43553 (July 23, 2003) (Order approving SR-NASD-2003-106).

¹⁰ See Exchange Act Release No. 46816 (November 12, 2002), 67 FR 69793 (November 19, 2002) (Order approving SR-NYSE-2002-56). Thereafter, the pilot period was extended to September

Since the NASD's and NYSE's lawsuit relating to the application of the California Standards has not been resolved, PCX is now requesting an extension of the pilot for an additional six months (or until the pending litigation has resolved the question of whether or not the California Standards apply to SROs). PCX requests that the pilot be extended for six months beginning on May 26, 2005. The extension of time permits the Exchange to continue the arbitration process using PCX rules regarding arbitration disclosures and not the California Standards. No substantive changes are being made to the pilot program, other than extending the operation of pilot program.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,¹² in general, and Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade by ensuring that OTP Holders, OTP Firms, ETP Holders and the public have a fair and impartial forum for the resolution of their disputes.

30, 2003. See Exchange Act Release No. 47836 (May 12, 2003), 68 FR 27608 (May 20, 2003) (Order approving SR-NYSE-2003-16).

¹¹ See Exchange Act Release No. 48553 (September 26, 2003), 68 FR 57494 (October 3, 2003) (Order approving SR-NASD-2003-144); Exchange Act Release No. 49452 (March 19, 2004) 69 FR 17010 (March 31, 2004) (Order approving SR-NASD-2004-40); Exchange Act Release No. 48552 (September 26, 2003), 68 FR 57496 (October 3, 2003) (Order approving SR-NYSE-2003-28); Exchange Act Release No. 49521 (April 2, 2004), 69 FR 18661 (April 8, 2004) (Order approving SR-NYSE-2004-18); Exchange Act Release No. 50447 (September 24, 2004), 69 FR 58567 (September 30, 2004) (Order approving SR-NASD-2004-126); Exchange Act Release No. 50449 (September 24, 2004), 69 FR 58985 (October 1, 2004) (Order approving SR-NYSE-2004-50); Exchange Act Release No. 51213 (February 16, 2005), 70 FR 8862 (Order approving SR-NASD-2004-180); and Exchange Act Release No. 51395 (March 18, 2005), 70 FR 15137 (March 24, 2005) (Order approving SR-NYSE-2005-14).

¹² 15 U.S.C. 78s(b).

¹³ 15 U.S.C. 78s(b)(5).

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. 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-2005-50 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-2005-50. 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 Website

<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, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. 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-2005-50 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.¹⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁵ in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

¹⁴ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(5).

The Commission also believes that the proposed rule change raises no issues that have not been previously considered by the Commission. Granting accelerated approval here will merely extend a pilot program that is designed to inform aggrieved parties about their options regarding mechanisms that are available for resolving disputes with broker-dealers. The PCX and PCXE adopted the pilot program under PCX Rule 12.1(i) and PCXE Rule 12.2(h), respectively, in response to the purported imposition of the California Standards on Exchange arbitrations and arbitrators. The pilot rules are currently set to expire on May 25, 2005, and must be extended in order to continue to provide the waiver option until a final judicial determination is reached. During the period of this extension, the Commission and Exchange will continue to monitor the status of the pending litigation.

After careful consideration, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁶ for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the Federal Register. The Commission notes that the current extension of the pilot program, under PCX Rule 12.1(i) and PCXE Rule 12.2(h), expires on May 25, 2005. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) of the Act,¹⁷ to approve the proposal on an accelerated basis.

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 15 U.S.C. 78f(b)(5).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-PCX-2005-50) is hereby approved on an accelerated basis, and that PCX Rule 12.1(i) and PCXE Rule 12.2(h) are extended until November 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland
Deputy Secretary

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).