

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47872; File No. SR-PCX-2003-22]

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

May 15, 2003.

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 May 13, 2003, 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, II, and III below, which items have been prepared by PCX. PCX filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective 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

The Exchange and its wholly owned subsidiary PCX Equities, Inc. ("PCXE") are proposing to extend the pilot rule in PCX rule 12.1, Commentary .02 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 a six-month pilot period.

#### 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 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

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.<sup>5</sup> The pilot program is currently set to expire on May 22, 2003.

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 "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.<sup>6</sup> 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, 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

<sup>5</sup> See Exchange Act Release No. 46881 (November 21, 2002), 67 FR 71224 (November 29, 2002) (Order approving SR-PCX-2002-71).

<sup>6</sup> 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), available on the NASD Web site at: [www.nasdaq.com/pdf-text/072202\\_ca\\_complaint.pdf](http://www.nasdaq.com/pdf-text/072202_ca_complaint.pdf).

proposal on September 26, 2002,<sup>7</sup> and the NYSE's rule proposal on November 12, 2003.<sup>8</sup> On November 7, 2002, PCX filed its proposed rule change with the SEC, which is substantially similar to the NASD's and NYSE's rule changes. The SEC approved this rule change on November 21, 2002, for a six-month pilot period through May 22, 2003.<sup>9</sup>

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).<sup>10</sup> PCX requests that the pilot be extended for six months beginning on May 23, 2003. 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 proposed rule change is consistent with the objectives of section 6(b)(5) of the Act,<sup>11</sup> in that it is designed to promote 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.

#### 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.

<sup>7</sup> See Exchange Act Release No. 46562 (September 26, 2002), 67 FR 62085 (October 3, 2002) (Order approving SR-NASD-2002-126).

<sup>8</sup> See Exchange Act Release No. 46816 (November 12, 2002), 67 FR 69793 (November 19, 2002) (Order approving SR-NYSE-2002-56).

<sup>9</sup> See Note 3, *supra*.

<sup>10</sup> See also *Richard Mayo v. Dean Witter Reynolds, Inc. et al.*, C-01-20336 JF (N.D. Cal.) in which the District Court for the Northern District of California held that the California Standards, at least as applied to SROs, are preempted by federal law. As this decision was rendered on April 22, 2003, it is still subject to appeal.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<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).

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

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

The PCX provided the Commission with written notice of its intention to file the proposed rule change at least five business days before its filing. Moreover, the PCX has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>12</sup> and rule 19b-4(f)(6) thereunder.<sup>13</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to rule 19b-4(f)(6)(iii) under the Act,<sup>14</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative date so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the 30-day operative date is consistent with the protection of investors and the public interest.<sup>15</sup> Accelerating the operative date will merely extend a pilot program that is designed to provide investors with a mechanism to resolve disputes with broker-dealers. During the period of this extension, the Commission and PCX will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates that the proposed rule change as effective and operative immediately.

**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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 Exchange. All submissions should refer to File No. PCX-2003-22 and should be submitted by June 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster #3505]**

**State of Illinois**

As a result of the President's major disaster declaration on May 15, 2003, I find that Adams, Alexander, Brown, Fulton, Hancock, Mason, Massac, Pope, Pulaski, Schuyler, Tazewell and Woodford Counties in the State of Illinois constitute a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on May 6 through May 11, 2003.

Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 14, 2003 and for economic injury until the close of business on February 17, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Cass, Hardin, Henderson, Johnson, Knox, LaSalle,

Livingston, Logan, Marshall, McDonough, McLean, Menard, Morgan, Peoria, Pike, Saline, Union, Warren and Williamson in the State of Illinois; Lee County in the State of Iowa; Ballard, Livingston, Marshal and McCracken Counties in the State of Kentucky; Cape Girardeau, Clark, Lewis, Marion, Mississippi and Scott Counties in the State of Missouri.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere .....	5.625
Homeowners without credit available elsewhere .....	2.812
Businesses with credit available elsewhere .....	5.906
Businesses and non-profit organizations without credit available elsewhere .....	2.953
Others (including non-profit organizations) with credit available elsewhere .....	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere .....	2.953

The number assigned to this disaster for physical damage is 350512. For economic injury the number is 9V4000 for Illinois; 9V4100 for Iowa; 9V4200 for Kentucky; and 9V4300 for Missouri.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 19, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

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**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster #P009]**

**State of Maine**

As a result of the President's major disaster declaration for Public Assistance on May 14, 2003 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Androscoggin, Aroostook, Cumberland, Franklin, Hancock, Lincoln, Oxford, Penobscot, Piscataquis and Washington Counties in the State of Maine constitute a disaster area due to damages caused by severe winter cold and frost occurring on December 17, 2002 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> 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).

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