

education program before such individuals would be permitted to act as members on the Floor; and (ii) participation by all Floor members in an Exchange-sponsored educational program, conducted semi-annually, and at such other times as may be appropriate in connection with any particular matter or matters. Rule 103A would also make it mandatory for Floor members to participate in any testing programs the Exchange may introduce from time to time in connection with the mandatory education program.

d. Stock Assignments and Reassignments and Organizational Changes of Specialist Units

The Exchange proposes to amend rule 103A to codify the Committee's authority with respect to approving stock assignments and reassignments, assignments in special stock situations, and organizational changes to specialist units. Such situations typically involve (i) changes in a specialist unit's organizational structure effecting control of the specialist unit, such as split-ups and mergers; (ii) withdrawal of individual specialists from one specialist unit, where the specialists propose to register with another unit and transfer certain securities to such other unit; and (iii) assignments of newly-listed securities to a specialist unit already registered in a security with a trading relationship to the newly-listed securities (e.g., a corporate restructuring of a listed company; stocks involved in mergers of listed companies; and immediate relisting of a listed company that delisted for technical reasons). In all of these situations, the MPC will review the proposal, and approve the matter if the Committee believes that market quality in the securities subject to the proposal will not be eroded.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder applicable to a national security exchange.⁶ In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act⁷ which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to remove

impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

Specialists play a crucial role in providing stability, continuity, and liquidity to the trading of securities. Specialists are obligated by the NYSE and the Act and rules thereunder,⁸ to maintain fair and orderly markets in designated securities. The Commission supports effective NYSE oversight of the specialist's activities and performance, including comparing a specialist's score on the quarterly Specialist Evaluation Questionnaire with other specialist's scores in an effort to provide an incentive to increase specialist performance. The Commission believes that giving the MPC the discretion to impose an allocation freeze should provide the Exchange with the means to identify and correct poor specialist performance and to ascertain whether specialists are maintaining fair and orderly markets in their assigned securities.

Furthermore, the proposed floor member qualification and continuing education requirements are a result of NYSE's undertakings.⁹ The NYSE pledged to design and implement a mandatory, regular education program for Floor members that would address Floor members' obligations and prohibitions under the federal securities laws and NYSE rules.¹⁰ The Commission believes that NYSE's proposal to require Floor members to participate in an education program prior to being permitted to act as members is appropriate and consistent with this undertaking. Also, the semi-annual, or more frequent as the NYSE deems appropriate, educational programs for all Floor members satisfies the NYSE's undertaking to provide regular, mandatory education programs. The Exchange also proposed mandatory testing programs that should ensure that Floor members are aware of Floor members' obligations and prohibitions under the federal securities laws and NYSE rules.

As a result, because the proposed amendment of NYSE Rule 103A promotes increased specialist performance and creates mandatory and regular training for all floor members, the Commission believes that NYSE's proposed amendment to Rule 103A is consistent with the provisions of the Act discussed above.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-NYSE-99-42), including amendments Nos. 1 and 2, is approved.

By the Commission, for the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-11803 Filed 5-10-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42756; File No. SR-PCX-99-10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 4 and 5 to the Proposed Rule Change by the Pacific Exchange, Inc. Amending Its Disciplinary Procedures

May 4, 2000.

I. Introduction

On April 2, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 disciplinary procedures. On June 25, 1999, January 18, 2000, and January 19, 2000, respectively, the PCX filed Amendment Nos. 1, 2 and 3 to the proposed rule change.³ The proposed rule change including Amendments Nos. 1, 2 and 3 were published for comment in the **Federal Register** on February 10, 2000.⁴ On April 21, 2000, the PCX filed Amendment No. 4 to the proposal.⁵ On April 28, 2000, the PCX

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letters from Michael D. Pierson, Director, Regulatory Policy, PCX, to Michael A. Walinskas, Associate Director, Division of Market Regulation ("Division"), SEC, dated June 24, 1999 ("Amendment No. 1") from Michael D. Pierson to Jennifer Colihan, Attorney, Division, SEC, dated January 7, 2000 ("Amendment No. 2"); from Michael D. Pierson to Kelly Riley, Attorney, Division, SEC, dated January 14, 2000 ("Amendment No. 3").

⁴ See Exchange Act Release No. 42384 (February 3, 2000), 65 FR 6675.

⁵ See Letter from Robert Pacileo, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Senior Special Counsel, Division, SEC, dated April 20,

Continued

⁵ 15 U.S.C. 78f.

⁶ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ See 17 CFR 240.11b-1; NYSE Rule 104.

⁹ See Securities Exchange Act Release No. 41574, 70 S.E.C. Docket 106 (June 29, 1999).

¹⁰ See *id.* at 9.

filed Amendment No. 5 to the proposal.⁶

The Commission received no comments regarding the proposal. This notice and order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment Nos. 4 and 5.

II. Description of the Proposal

The PCX is proposing to amend its disciplinary proceedings rules,⁷ and in particular, to add new rules to codify the independent function of PCX Regulatory Staff; to clarify what communications are improper in the context of pending investigations or disciplinary proceedings; and to provide PCX Regulatory Staff with the ability to issue formal complaints for the alleged violation of Exchange rules.

A. Independence of Regulatory Staff

PCX proposes to amend Rule 10.2 governing the procedures for investigating possible violations of Exchange rules to ensure the independence of the PCX Regulatory Staff, and guarantee its separation from the Exchange's commercial interests. The rule is being modified to explicitly state that the Exchange's Regulatory Staff will function independently of the commercial interests of the Exchange and will have the sole discretion to investigate possible violations within the disciplinary jurisdiction of the Exchange. The proposed rule further provides that no member of the Board of Governors or the Executive Committee or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.

2000 ("Amendment No. 4"). Among other things, Amendment No. 4 added language to prohibit interested PCX staff with knowledge of a pending Exchange investigation or disciplinary proceeding from making ex parte communications. Amendment No. 4 also proposed language to permit an Exchange disciplinary committee to issue to interested PCX staff responsible for an ex parte communication, or the party who benefited from the communication to show cause why the claim of the interested PCX staff should not be adversely affected by reason for the ex parte communication, including, but not limited to the entry of an adverse summary decision.

⁶ See Letter from Robert Pacileo, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Senior Special Counsel, Division, SEC, dated April 27, 2000 ("Amendment No. 5"). In Amendment No. 5, the Exchange proposed to add Rule 10.3(e) which would require a member of a Hearing Panel, or the disciplinary committee with jurisdiction over a proceeding, to recuse himself or herself in the event a conflict of interest exists.

⁷ The Commission notes that the Exchange has proposed a similar disciplinary structure and procedures for the Pacific Equities, Inc. See Exchange Act Release No. 42178 (Nov. 24, 1999), 64 FR 68136 (Dec. 6, 1999) (File No. SR-PCX-99-39).

The Exchange is also proposing to make various technical and housekeeping changes to the text of PCX Rule 10.2, which will now cover both Exchange investigations and regulatory cooperation.

B. Ex Parte Communications

The Exchange is proposing to adopt new PCX Rule 10.3 to codify specific provisions governing ex parte communications. The new rule codifies what communications regarding pending investigations and disciplinary proceedings are improper.

The proposed ex parte rules make clear that no person who is a subject of a pending Exchange investigation or pending disciplinary proceeding or any interested PCX staff member⁸ may make an ex parte communication to a member of the Board of Governors, a member of any committee with disciplinary jurisdiction, or any member of the Exchange Regulatory Staff. The proposed rule further provides that no person who is a member of a Hearing Panel or the disciplinary committee with jurisdiction over an investigation or disciplinary proceeding or any interested PCX staff member⁹ may make an ex parte communication to a member of the Board of Governors, a member of the Executive Committee, any member of Exchange Regulatory Staff, or the subject of a pending Exchange investigation or disciplinary proceeding. Next, the proposed rule prohibits members of the Board of Governors and the Exchange Committee, as well as interested PCX staff members¹⁰ from making an ex parte communication to any member of Exchange Regulatory Staff, the subject of a pending Exchange investigation or pending disciplinary proceeding or a member of a Hearing panel or the disciplinary committee with jurisdiction over the investigation or disciplinary proceeding.

With respect to the disclosure of prohibited communications, proposed PCX Rule 10.3(b) provides that any person who receives or makes a communication prohibited by the Rule must promptly submit a copy of any written communications and/or a substantive description of any oral communications to Exchange Regulatory Staff for inclusion in the record of the investigation or disciplinary proceeding.

Proposed Exchange Rule 10.3(c) sets forth remedies applicable to situations in which prohibited communications have been made. Specifically, the rule

⁸ See Amendment No. 4, *supra* note 5.

⁹ See Amendment No. 4, *supra* note 5.

¹⁰ See Amendment No. 4, *supra* note 5.

provides that any member, member organization, associated person, or interested PCX staff member who made, or knowingly caused to be made, a communication prohibited by subsection (a) will be subject to disciplinary action. The rule further provides that an Exchange disciplinary committee, to the extent consistent with the interests of justice, may issue to the member, member organization or associated person responsible for the communication or who benefited from the communication an order to show cause why the claim, defense or interest of the member, member organization or associated person should not be adversely affected by reason of such ex parte communication, including but not limited to the entry of an adverse summary decision.

Proposed PCX Rule 10.3(d) clarifies that nothing in the rule on ex parte communications prohibits the members of a disciplinary committee or Exchange Regulatory Staff from discussing a pending investigation or disciplinary proceeding at a meeting of the committee in connection with: (1) The adjudication of the investigation pursuant to the Minor Rule Plan; (2) the determination of whether to impose informal discipline; (3) the determination of whether to authorize a complaint or take no further action; or (4) the determination of whether to accept an offer of settlement.

Proposed Commentary .01 to Exchange Rule 10.3 defines an "ex parte communication" as an oral or written communication made without notice to all parties, *i.e.*, Exchange Regulatory Staff and the subjects of investigations or respondents in disciplinary proceedings. The Commentary further states that a written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. It further provides that an oral communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present.¹¹

C. Complaints

PCX Rule 10.3, which the PCX proposes to renumber as Rule 10.4, currently provides that formal complaints for alleged violations of

¹¹ In Amendment No. 4, the PCX deleted Commentary .02 to PCX Rule 10.3 which provided that a disciplinary proceeding will be considered to be pending from the date that a Complaint has been issued pursuant to Rule 10.5 until the proceeding, including any appeals, becomes final. The PCX represented in Amendment No. 4 that it will amend SR-PCX-00-06 to include this as a commentary to another PCX disciplinary rule.

Exchange rules (and other provisions) may be authorized by the PCX Board of Governors, by the Executive Committee of the Exchange, or by any standing committee designated by the Board of Governors to review disciplinary proceedings. The Exchange is proposing to modify that provision so that only Exchange Regulatory Staff designated by the Exchange and any standing committee designated by the Board of Governors to review disciplinary proceedings has the authority to determine whether there is probable cause to issue a formal complaint, *i.e.*, probable cause for finding that a violation within the disciplinary jurisdiction of the Exchange has occurred and that further proceedings are warranted. The PCX also proposes to make certain technical changes to the text of current Exchange Rule 10.3 for clarification purposes, *e.g.*, changing the term "charged" to "alleged."

Further, PCX proposes to amend its rule governing complaints to provide that at any time prior to service of the written answer to the Complaint, the Complaint may be amended to allege new matters of fact or law. However, after service of the written answer, the Complaint may only be amended if the Hearing Panel concludes that good cause exists for the amendment based upon the submission of a written motion by the Exchange.

Finally, the Exchange is proposing to adopt new Commentary .01 to new PCX Rule 10.4 to provide that the term "probable cause" means facts and circumstances that establish a reasonable likelihood that the person committed the violation at issue.

D. Summary Determinations

The Exchange proposes to renumber PCX Rule 10.5 to Rule 10.4(c).

III. Discussion

For the reasons discussed below, the Commission finds that the proposed changes to the PCX Rules governing investigations and regulatory cooperation, *ex parte* communications and complaints are consistent with the Act, improve the current disciplinary system, and should provide fair and efficient procedures for conducting investigations.¹² Therefore, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act,¹³ and in particular with

Sections 6(b)(5),¹⁴ 6(b)(6)¹⁵ and Section 6(b)(7)¹⁷ of the Act.

Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.¹⁷ Section 6(b)(6) requires, among other things, that the rules of an exchange provide that its members shall be appropriately disciplined for violations of the Act, the rules and regulations thereunder or the rules of an exchange.¹⁸ Section 6(b)(7) requires that the rules of an Exchange, among other things, should provide a fair procedure for disciplining members.¹⁹

A. Investigations and Regulatory Cooperation

The Commission finds that the proposed rule change, which removes the authority of the Board of Governors, Executive Committee, the Ethics and Business Conduct Committee and the Floor Trading Committee to review disciplinary proceedings to be consistent with the requirements of the Act.

The proposal gives the Exchange's Regulatory Staff the authority to determine whether to investigate potential violations within the disciplinary jurisdiction of the Exchange. This provision should prevent inappropriate commercial interests from improperly influencing the Exchange's disciplinary process consistent with the requirements of Section 6(b)(7).²⁰ This proposal should help to ensure that the Exchange's disciplinary process operates in a fair manner without potential improper, unrelated business processes.

The Commission believes that the Exchange has struck an appropriate balance by permitting Governors and members of the aforementioned committees to submit complaints alleging possible violations of Exchange Rules and/or violations of the Act to the Regulatory Staff for investigation, but then prohibiting them from further participation in the investigation or proceedings. In this way, the Governors and committee members continue to have a voice and the ability to bring potential violations to the attention of the Regulatory Staff, but are not given undue control and influence over the proceedings to the disadvantage of Exchange members.

The Commission further finds that the Exchange's explicit proposed rule prohibiting members of the Board of Governors or the Executive Committee or other non-Regulatory Staff persons from interfering with or attempting to influence any pending investigation or disciplinary proceeding is appropriate.

The Exchange's proposed rule accurately echoes the Commission's belief that persons responsible for investigations and disciplinary proceedings should enjoy autonomy and independence from inappropriate pressures. The Commission further finds that the PCX's initiative to separate the investigatory functions of the Regulatory Staff from the commercial interests of Exchange members is another step toward ensuring that the PCX disciplinary process is well insulated and fair to all participants.

B. Ex Parte Communications

The PCX has proposed a new rule that defines and prohibits *ex parte* communications between disciplinary committee members, the Board of Governors, and the parties to a disciplinary investigation or proceeding. In the Commission's view, it is appropriate for the Exchange to prohibit *ex parte* communications between the disciplinary committees and panels and the parties or their representatives during the disciplinary proceedings. The Commission also finds that the boundaries set by the Exchange in defining the prohibited communications should help ensure that no party can unfairly advance his or her position in an investigation or disciplinary proceeding through discussion or other communication outside of the proceeding's forum. In addition, the Commission finds that the parties subject to the prohibition on *ex parte* communications include those who reasonably would be expected to participate in a disciplinary proceeding.

The Commission also approves of the manner in which the Exchange proposes to handle violations of the prohibition on *ex parte* communications. First, the proposed rule requires complete disclosure of the communication in the form of a written memorandum describing any oral communication and copies of any written communication for inclusion in the record of the investigation or disciplinary proceeding. The proposed rule then states that the party responsible for the *ex parte* communication will be subject to disciplinary action. The proposed rule then grants the disciplinary committee the authority to demand that the party who made the *ex parte* communication,

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(6).

¹⁶ 15 U.S.C. 78f(b)(7).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78f(b)(6).

¹⁹ 15 U.S.C. 78f(b)(7).

²⁰ 15 U.S.C. 78f(b)(7).

¹² In approving this proposal, the Commission has considered the proposed rules' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b).

or the party who benefited from the communication, show cause why the claim, defense or interest of that party should not be adversely affected by reason of such ex parte communication, including but not limited to the entry of an adverse summary decision. The Commission finds that the consequences set out by the Exchange for violating the prohibition on ex parte communication are appropriate and should be an effective deterrent for committing violations and thus, the Commission finds that these provisions are consistent with Section 6(b)(6) of the Act.²¹

The Commission further believes that it is appropriate to recognize certain circumstances under which ex parte communications are permissible. The Exchange's proposed rule provides that members of a disciplinary committee or Exchange Regulatory Staff are not prohibited from engaging in ex parte communications when discussing: (1) The adjudication of the investigation pursuant to the Minor Rule Plan; (2) the determination of whether to impose informal discipline; (3) the determination of whether to authorize a complaint or take no further action; or (4) the determination of whether to accept an offer of settlement. The Commission finds that lifting the general prohibition against ex parte communications in these situations should ensure that the disciplinary process operates efficiently by providing all persons involved in the settlement process or the pre-complaint resolution process with the flexibility to attempt to dispose of a disciplinary matter without formal proceedings being initiated.

C. Complaints

As with the proposed rule governing investigations, the Exchange is proposing to modify its rule governing the initiation of formal disciplinary proceedings following an investigation to provide that only Exchange Regulatory Staff and standing committees designated by the Board of Governors to review disciplinary proceedings have the authority to determine whether there is probable cause to issue a formal complaint, *i.e.*, probable cause for finding that a violation within the disciplinary jurisdiction of the Exchange has occurred and that further proceedings are warranted. Under the current rule, both the members of the Board of Governors and the Executive Committee have the authority to initiate disciplinary actions.

The Commission supports the Exchange's initiative to provide the Regulatory Staff and the committee with jurisdiction over disciplinary proceedings independent from the Board of Governors and Executive Committee. The Commission believes that this independence will allow the Exchange to implement a vigorous and evenhanded enforcement program.

The Exchange is also proposing to add a section to its rule that would allow the Exchange to amend its complaint freely anytime before a Respondent serves his or her answers thereto. However, the proposed rule provides that after the Respondent serves his or her answer, the Exchange may only amend the complaint with the consent of the hearing panel upon a showing of good cause. The Exchange finds that this procedure is fair to both parties because it protects those persons accused of violating Exchange rules from facing an unlimited number of new allegations throughout the disciplinary process, while also providing the Exchange with the ability to add new claims. The Commission believes that this provision is consistent with both Sections 6(b)(6) and 6(b)(7) because it enables the Exchange to bring new actions as information regarding potential violations becomes known in a manner that is fair to the subject of the complaint. Further, this provision also limits the Exchange's ability to delay proceedings by continually amending its complaint. After an answer has been submitted, the Exchange must show good cause to amend a complaint. This should ensure that disciplinary proceedings are completed in a timely fashion and provides respondents with a level of certainty as to the allegations being asserted. Moreover, by having the hearing panel make a finding of good cause to amend a complaint, the Commission believes that inappropriate and improper amendments should be prevented. The proposal should protect respondents from unlimited amendments which could lead to uncertain proceedings and undue delays in the disciplinary process.

Finally, the Commission believes that this amendment is consistent with Section 6(b)(5) of the Act²² because it permits the Exchange, subject to specified restrictions, to amend its complaints to enforce its rules. This should ensure that members are disciplined for violations alleged to have been committed. Thus, the rule should assist the Exchange in seeking to prevent fraudulent and manipulative

acts by its members to sufficiently protect investors and the public interest.

IV. Amendment No. 4

The Commission finds good cause for approving Amendment No. 4 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 4, the Exchange added interested PCX staff members to the category of persons who are prohibited from engaging in ex parte communications. The Commission believes that this addition will provide extra assurance to those involved in disciplinary proceedings that the proceedings will be conducted fairly and impartially. Additionally, in the event that an interested PCX staff member does participate in an ex parte communication in violation of the proposed Rule, Amendment No. 4 allows an Exchange disciplinary committee to demand that the interested PCX Staff member show cause why the claim of the PCX should not be adversely affected because of the ex parte communication, thus holding the Exchange to the same level of responsibility as those persons being investigated.

Finally, Amendment No. 4 makes technical non-substantive changes to the proposal such as moving a commentary to another location within the disciplinary rules, and correcting language to provide for parallel construction of sentences and clarity.

The Commission finds that the PCX's proposed changes in Amendment No. 4 further strengthen and clarify the proposed rule change and raise no new regulatory issues. Further, the Commission believes that Amendment No. 4 does not significantly alter the original proposal which was subject to a full notice and comment period. Therefore, the Commission finds that granting accelerated approval to Amendment No. 4 is appropriate and consistent with Section 19(b)(2) of the Act.²³

V. Amendment No. 5

The Commission finds good cause for approving Amendment No. 5 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 5, the Exchange seeks to adopt language that would prohibit any member of a disciplinary committee or a hearing panel from participating in a proceeding if that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. The

²¹ 15 U.S.C. 78s(b)(6).

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78s(b)(2).

Commission believes that the addition of this provision is appropriate in that it will increase the level of fairness and impartiality in disciplinary proceedings and will aid in the dispassionate application of the disciplinary rules. The Commission believes that the PCX has proposed a reasonable standard under which an adjudicator or participant in the disciplinary process must recuse him or herself or may be disqualified by the Chief Executive Officer of the PCX.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 4 and 5, including whether the proposed amendments are 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 amendment that are filed with the Commission, and all written communications relating to the amendment 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX.

All submissions should refer to File No. SR-PCX-99-10 and should be submitted by June 1, 2000.

VII. Conclusion

For all of the aforementioned reasons, 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.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-PCX-99-10), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-11805 Filed 5-10-00; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9H20]

State of New York (and Contiguous Counties in the State of New Jersey)

New York County and the contiguous counties of Bronx, Kings, and Queens in the State of New York, and Bergen and Hudson Counties in New Jersey constitute an economic injury disaster loan area as a result of a water main break, and subsequent flooding, that occurred on March 2, 2000. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on February 5, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South, 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number for the State of New Jersey is 9H2100.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: May 3, 2000.

Aida Alvarez,

Administrator

[FR Doc. 00-11869 Filed 5-10-00; 8:45 am]

BILLING CODE 8025-01-P

TENNESSEE VALLEY AUTHORITY

Addition of Electric Generation for Peaking and Baseload Capacity at Greenfield Sites, Haywood County, Tennessee

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of Record of Decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA has decided to adopt the preferred alternative identified in its *Final Environmental Impact Statement for Addition of Electric Generation Peaking and Baseload Capacity at Greenfield Sites, Haywood County, Tennessee.*

The Final Environmental Impact Statement (FEIS) was made available to the public on March 16, 2000. A Notice of Availability (NOA) of the Final EIS was published by the Environmental

Protection Agency in the **Federal Register** on March 31, 2000. Under the preferred alternative, TVA has decided to construct natural gas-fired simple cycle combustion turbine power plants with up to 1,400 Megawatts (MW) of capacity at the Lagoon Creek Site. The construction will occur in two 700 MW phases.

FOR FURTHER INFORMATION CONTACT: Greg Askew, Senior Specialist, National Environmental Policy Act, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, mail stop WT 8C, Knoxville, Tennessee 37902-1499; telephone (865) 632-6418 or e-mail gaskew@tva.gov.

SUPPLEMENTARY INFORMATION:

Background

In December 1995, TVA issued its *Energy 2020 Integrated Resource Plan and Final Programmatic Environmental Impact Statement*. This document projected demands for electricity in the TVA power service area through the year 2020 and evaluated different ways of meeting these projected increases. Under the forecast adopted by TVA, the demand for electricity was projected to exceed TVA's 1996 generating capacity of 28,000 (MW) by approximately 6,250 MW in the year 2005. TVA decided to meet this demand through a combination of supply-side options and customer service options.

Since 1995, TVA has added about 2,700 MW of generating capacity and 1,400 MW in option-purchase agreements to meet the increasing power demand in the Tennessee Valley (TVA 1999a). Incrementally, the 2,700 MW growth in capacity consists of operational efficiencies resulting from capital improvements at existing fossil, nuclear and hydro power production facilities, along with additions in capacity at several locations.

Over the next few years, TVA plans to further increase capacity by 2,400 MW through improvements to existing units and the addition of peaking units at existing fossil plants. However, these increases may not be enough to maintain adequate reserve capacity.

It is reasonable to expect that the delivery of reliable and economic power to customers will require TVA to continue to pursue all of the portfolio options recommended in Energy Vision 2020, both demand-side and supply-side. Consistent with Energy Vision 2020, from which this EIS tiers, each of the portfolio options received an appropriate environmental review before a decision was made to proceed with implementation. Those actions are

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).