

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.

#### 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. 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. Copies of such filing will also be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR-DTC-00-19 and should be submitted by December 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43641; File No. SR-PCX-00-40]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Audit Committee Requirements for Listed Companies

November 29, 2000.

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 October 23, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its

wholly-owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCXE. The Exchange filed Amendment No. 1 to the proposed rule change on November 22, 2000.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The PCXE proposes to amend its rules pertaining to composition of audit committees of listed companies as recommended by the Blue Ribbon Committee on Improving Effectiveness of Corporate Audit Committees. The text of the proposed rule change is set forth below. New text is in italics. Deletions are in brackets.

##### Corporate Governance

Rule 5.3(a) Conflicts of interest—No change.

Rule 5.3(b) Independent Directors/Audit Committee

The Corporation shall require that each listed domestic issuer have at least two independent directors on its board of directors. Such issuer must maintain an audit committee. [a majority of which] *All audit committee members must be independent directors that satisfy the audit committee requirement set forth below.*

(1) *Audit Committee Charter. The board of directors must adopt and approve a formal written charter for the audit committee. The audit committee must review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify the following:*

(i) *The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements;*

(ii) *That the outside auditor is ultimately accountable to the board of directors and the audit committee of the company, that the audit committee and board of directors have the ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement); and*

(iii) *That the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company and that the audit*

*committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the board of directors take appropriate action in response to the outside auditors' report to satisfy itself of the outside auditors' independence.*

(2) *Composition/Expertise Requirement of Audit Committee Members.*

(i) *Each audit committee will consist of at least three independent directors, all of whom have no relationship to the company that may interfere with the exercise of their independence from management and the company ("Independent");*

(i) *Each member of the audit committee must be financially literate, as such qualification is interpreted by the company's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee; and*

(iii) *At least one member of the audit committee must have accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment.*

(3) *Independence Requirement of Audit Committee Members. In addition to the definition of Independent provided in 5.36(2)(i), the following restrictions shall apply to every audit committee member:*

(i) *Employees: A director who is an employee (including non-employee executive officers) of the company or any of its affiliates may not serve on the audit committee until three years following the termination of his or her employment. In the event the employment relationship is with a former parent or predecessor of the company, the director could serve on the audit committee after three years following the termination of the relationship between the company and the former parent or predecessor. "Affiliate" includes a subsidiary, sibling company, predecessor, parent company, or former parent company.*

(ii) *Business Relationship. A director (a) who is a partner, controlling shareholder, or executive officer of an organization that has a business relationship with the company, or (b) who has a direct business relationship with the company (e.g., a consultant) may serve on the audit committee only if the company's board of directors determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. In making a determination regarding the independence of a direct pursuant to this paragraph, the board of directors should consider, among other things, the materiality of the relationship to the company, to the director, and, if applicable, to the organization with which the director is affiliated. "Business relationships" can include commercial, industrial, banking consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has such a relationship. The director may serve on the audit*

<sup>3</sup> Letter dated November 20, 2000 from Cindy L. Sink, Senior Attorney, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). Amendment No. 1 specifies an implementation plan for the proposed rule change.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 7s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

committee without the above-referenced board of directors' termination after three years following the termination of, as applicable, either (a) the relationship between the organization with which the director is affiliated and the company, (b) the relationship between the director and his or her partnership status, shareholder interest or executive officer position, or (c) the direct business relationship between the director and the company.

(iii) *Cross Compensation Committee Link.* A director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.

(iv) *Immediate Family.* A director who is an Immediate Family member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship. "Immediate Family" includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, and anyone (other than employees) who shares such person's home.

(v) *Notwithstanding the requirements of subparagraphs (3)(i) and (3)(iv), one director who is no longer an employee or who is an Immediate Family member of a former executive officer of the company or its affiliates, but is not considered independent pursuant to these provisions due to the three-year restriction period, may be appointed, under exceptional and limited circumstances, to the audit committee if the company's board of directors determines in its business judgment that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the company discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.*

(4) *Written Affirmation.* As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provide the Exchange written confirmation regarding:

(i) any determination that the company's board of directors has made regarding the independence of directors pursuant to any of the subparagraphs above;

(ii) the financial literacy of the audit committee member;

(iii) the determination that at least one of the audit committee members has accounting or related financial management expertise; and

(iv) the annual review and reassessment of the adequacy of the audit committee charter.

(5) "Officer" has the meaning specified in Rule 16a-1(f) under the Securities Exchange Act of 1934, or any successor rule.

(6) *Initial Public Offering.* Companies listing in conjunction with their initial public offering (including spin-offs and carve outs) will be required to have two qualified audit committee members in place within three months of listing and a third qualifier

member in place within twelve months of listing.

## **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 PCXE 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 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**

The proposed rule change modifies PCXE Rule 5.3(b), on audit committee requirements of listed domestic issuers, to conform to recommendations made by the Blue Ribbon Committee on Improving Effectiveness of Corporate Audit Committees and rule changes adopted by other SROs.<sup>4</sup> The proposed rule change specifies four requirements for a qualified audit committee, defines certain terms for purposes of the proposed audit committee requirements, and sets forth requirements for companies listing on the Exchange in conjunction with an initial public offering.

First, proposed Rule 5.3(b)(1) requires the board of directors of companies listed on the Exchange to adopt and approve a formal written charter for the audit committee. The audit committee must review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify: (i) The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements; (ii) that the outside auditor is ultimately accountable to the board of directors and the audit committee of the company, that the audit committee and board of directors have the ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside

auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement); and (iii) that the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company; that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor; and for recommending that the board of directors take appropriate action in response to the outside auditor's report to satisfy itself of the outside auditor's independence.

Second, proposed Rule 5.3(b)(2) sets forth the composition and expertise requirements of audit committee members. The proposal requires: (i) Each audit committee to consist of at least three independent directors, all of whom have no relationship to the company that may interfere with the exercise of their independence from management and the company ("Independent"); (ii) each member of the audit committee to be financially literate, as such qualification is interpreted by the company's board of directors in its business judgment, or to become financially literate within a reasonable period of time after his or her appointment to the audit committee; and (iii) at least one member of the audit committee to have accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment.

Third, proposed Rule 5.3(b)(3) provides the independence requirements of audit committee members. In addition to the definition of Independent provided in Rule 5.3(b)(2)(i), the following restrictions apply to every audit committee member.

(i) *Employees.* A director who is an employee (including non-employee executive officers) of the company or any of its affiliates may not serve on the audit committee until three years following the termination of his or her employment. In the event the employment relationship is with a former parent or predecessor of the company, the director could serve on the audit committee after three years following the termination of the relationship between the company and the former parent or predecessor. "Affiliate" includes a subsidiary, sibling company, predecessor, parent company, or former parent company.

(ii) *Business Relationship.* A director (a) who is a partner, controlling

<sup>4</sup> See Securities Exchange Act Release Nos. 42231 (Dec. 14, 1999), 64 FR 71523 (Dec. 21, 1999) (approving SR-NASD-99-48); 42232 (Dec. 14, 1999), 64 FR 71518 (Dec. 21, 1999) (approving SR-AMEX-99-38); and 42233 (Dec. 14, 1999), 64 FR 71529 (Dec. 21, 1999) (approving SR-NYSE-99-39). The proposed rule changes were, in large part, adapted from NYSE Listed Company Manual Sections 303.00, 303.01, and 303.02.

shareholders, or executive officer of an organization that has a business relationship with the company, or (b) who has a direct business relationship with the company (e.g., a consultant) may serve on the audit committee only if the company's board of directors determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. In making a determination regarding the independence of a director pursuant to this paragraph, the board of directors should consider, among other things, the materiality of the relationship to the company, to the director, and, if applicable, to the organization with which the director is affiliated. "Business relationships" can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has such a relationship. The director may serve on the audit committee without the above-reference board of director's determination after three years following the termination of, as applicable, either (a) The relationship between the organization with which the director is affiliated and the company, (b) the relationship between the director and his or her partnership status, shareholder interest or executive officer position, or (c) the direct business relationship between the director and the company.

(iii) *Cross Compensation Committee Link*. A director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.

(iv) *Immediate Family*. A director who is an Immediate Family member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship. "Immediate Family" includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, and anyone (other than employees) who shares such person's home.

(v) Notwithstanding the requirements of subparagraphs (3)(i) and (3)(iv) of Rule 5.3(b), one director who is no longer an employee or who is an Immediate Family member of a former executive officer of the company or its affiliates, but is not considered independent pursuant to these provisions due to the three-year

restriction period, may be appointed, under exceptional and limited circumstances, to the audit committee if the company's board of directors determines in its business judgment that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the company discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

Fourth, proposed Rule 5.3(b)(4) sets forth on ongoing written affirmation requirement. The proposal provides that as part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provide the Exchange written confirmation regarding: (i) any determination that the company's board of directors has made regarding the independence of directors pursuant to any of the subparagraphs above; (ii) the financial literacy of the audit committee number; (iii) the determination that at least one of the audit committee members has accounting or related financial management expertise; and (iv) the annual review and reassessment of the adequacy of the audit committee charter.

Proposed Rule 5.3(b)(5) defines "Officer" to have the meaning specified in Rule 16a-1(f) under the Act, or any successor rule. Moreover, proposed Rule 5.3(b)(6) provides that companies listing in conjunction with their initial public offering (including spin-offs and carve outs) will be required to have two qualified audit committee members in place within three months of listing and a third qualified member in place within twelve months of listing.

Finally, the Exchange proposes to implement a transition period in order to provide its issuers with sufficient time to come into compliance with the proposed rule change.<sup>5</sup> Specifically, the Exchange proposes (i) to "grandfather" all public company audit committee members qualified under current PCX rules until they are re-elected or replaced and (ii) give companies eighteen months from the date of SEC approval of this rule filing to recruit the requisite members for their audit committees. Issuers listed on the Exchange as of the effective date of the proposed rule change will have six months to adopt a formal written audit committee charter.

## 2. Statutory Basis

The PCXE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, the Exchange's rules to be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest.

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

The PCXE 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

The PCXE did not solicit or receive written comments on the proposed rule change.

## 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 Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(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 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

<sup>5</sup> See Amendment No. 1, *supra* note 3.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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 the File No. SR-PCX-00-40 and should be submitted by December 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## DEPARTMENT OF STATE

[Public Notice 3491]

### **Bureau of Educational and Cultural Affairs; College and University Affiliations Program for Algeria; Request for Grant Proposals**

**SUMMARY:** The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program to support the development of programs of instruction and faculty training at one or more universities in Algeria in business management and entrepreneurship, public administration, or another field with significant potential impact on the Algerian economy. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to pursue institutional or departmental objectives in partnership with (an) Algerian institution(s) with support from the College and University Affiliations Program. The means for achieving the objectives of the applicant and its partner(s) may include mentoring, teaching, consultation, research, distance education, internship training, and professional outreach to public and private sector managers and entrepreneurs.

*Overview and Project Objectives:* The project is designed to assist one or more Algerian universities to develop a modern curriculum and program in business management or public administration to facilitate the development of business activity and the quality, efficiency and integrity of the private and public sectors in Algeria. While priority will be given to competitive proposals in business management, proposals in public administration and other fields are also eligible if the proposals demonstrate

their potential impact on the Algerian economy.

In business management, proposals emphasizing practical strategies to assist the faculty to develop a new curriculum in business management focusing in accounting, finance, banking, and entrepreneurship are particularly encouraged.

In public administration proposals with potential economic impact through assistance with curriculum reform and faculty training in fields such as taxation, financial management, land registry/ownership and property rights are also eligible. All proposals should explain potential impact on the Algerian economy.

For each project, applicants are encouraged to develop outreach to and collaboration with practitioners by including them, together with junior and senior instructors, in working groups for faculty development and curriculum design and development.

Bureau policy stipulates that awards to organizations with less than four years' experience in conducting international exchanges are limited to \$60,000. The Bureau anticipates awarding one or two grants from a total of \$240,000 that is expected to be available to support this program. Funds will be awarded for a period up to three years to defray the costs of exchanges, to provide educational materials, and to increase library holdings and improve Internet connections. Up to 25% of the grant total may be used to defray the costs of project administration. Indirect administrative costs are not an eligible expense for Bureau funding under this competition, but may be presented as part of the U.S. institutional contribution.

The project should pursue these objectives through a strategy that coordinates the participation of junior and senior level faculty, administrators or graduate students for any appropriate combination of teaching, mentoring, internships, in-service training and outreach, for exchange visits ranging from one week to an academic year. Visits of one semester for participants from Algeria are strongly encouraged and program activities must be tied to the goals and objectives of the program. Proposals may also include English language training for selected participants whose prior knowledge of English needs to be activated or refreshed. Visits by representatives of the American partner institution to Algeria are not required, but short visits may be proposed for eventual implementation should conditions permit. All applicants should read the U.S. Department of State Travel

Warning for Algeria dated March 31, 2000.

*U.S. Institution and Participant Eligibility:* In the United States, participation in the program is open to accredited two and four-year colleges and universities, including graduate schools, as well as to other organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c). Applications from consortia or other combinations of U.S. colleges and universities are eligible. Secondary U.S. partners may include governmental and non-governmental organizations, as well as non-profit service and professional organizations. The lead U.S. university in the consortium or other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners.

Participants representing the U.S. institution must be U.S. citizens. With the exception of an outside consultant reporting on the degree to which project objectives have been achieved, participants who are traveling under the Bureau's grant funds must be teachers, advanced graduate students, who are teaching or research assistants, or administrators from the participating institution(s). Advanced graduate students are eligible for Bureau-funded participation in this program only if they are working under the direction of an accompanying faculty participant.

*Algerian Institution and Participant Eligibility:* In Algeria, the partner must be a recognized institution of post-secondary education. Secondary foreign partners may include relevant governmental and non-governmental organizations, as well as non-profit service and professional organizations concerned with issues in business development or public administration training in Algeria.

Foreign participants must be citizens or permanent residents of Algeria and qualified to receive a J-1 visa.

*Budget Guidelines:* Applicants may submit a budget of up to \$240,000. Requests for amounts smaller than the maximum are eligible. Budget and budget notes should carefully justify the amounts needed. There must be a summary budget as well as a breakdown reflecting the program and administrative budgets including unit costs. Cost sharing will be considered an important indicator of institutional commitment.

Please refer to the Solicitation Package for complete guidelines and formatting instructions.

<sup>7</sup> 17 CFR 200.30-3(a)(12).