

imposed against the former member. Nevertheless, the former member subsequently fails to honor the arbitration award. Because more than one year has lapsed since the former member's termination of membership and the Exchange did not provide written notice of the commencement of an inquiry into the failure to pay the award, the Exchange could not assert disciplinary jurisdiction over the former member. The Exchange believes this is problematic given the fact that the dispute concerned Exchange-related business, and that the award was pursuant to an Exchange arbitration proceeding.

While the Exchange notes that the customer in the above example would be able to seek enforcement of the award in the court system, the inability of the Exchange to even potentially take disciplinary measures undermines the credibility of the CBOE arbitration forum. Therefore, the proposed rule change would essentially eliminate the notice requirement in Rule 17.1(b) solely with respect to instances where the Exchange seeks to take disciplinary measures with respect to a former member or person associated with a member for failure to honor an arbitration award pursuant to Chapter 18.

2. Statutory Basis

The Exchange believes that the proposed rule change will strengthen the Exchange's arbitration process and allow the Exchange to take action for non-compliance with its arbitration rules. Accordingly, the Exchange believes 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, and, in particular, with the requirements of sections 6(b)(1),⁴ 6(b)(6),⁵ 6(d)(1)⁶ and 19(d) of the Act.⁷

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

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to 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 self-regulatory organization consents, the Commission will:

A. by order approve the 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 at 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. SR-CBOE-2001-14 and should be submitted by July 9, 2001.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-15220 Filed 6-15-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44403; File No. SR-PCX-99-45]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to Housekeeping Amendments to Rules Governing Floor Brokers

June 8, 2001.

I. Introduction

On November 5, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to 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 making housekeeping amendments to the Exchange's rules governing floor brokers. On March 23, 2000, the PCX filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on June 8, 2000.⁴ On January 8, 2001, the PCX filed Amendment No. 2 to the proposed rule change.⁵ No comments were received on the proposal. This order approves the proposal, as amended.

II. Description Proposal

In its proposed rule change, the Exchange seeks to modify its options floor broker rules by renumbering certain Options Floor Procedure Advices ("OFFPAs"),⁶ clarifying existing

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Robert P. Pacileo, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), SEC, dated March 22, 2000 ("Amendment No. 1").

⁴ Securities Exchange Act Release No. 42861 (May 30, 2000), 65 FR 36489.

⁵ See letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, SEC, dated January 5, 2001 ("Amendment No. 2"). In Amendment No. 2, the Exchange made technical changes to the titles of PCX Rule 6.47(b) and PCX Rule 6.47(c). Also, the Exchange revised PCX Rule 6.47(b) to indicate that subsections (4)-(6) had been added to the rule since the time the proposed rule change was filed. See Securities Exchange Act Release No. 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000). Next, the Exchange added "and Rule 6.73" to the last sentence of PCX Rule 6.47(d). Finally, the Exchange deleted the last two sentences of Commentary .05 to PCX Rule 6.47.

⁶ The following OFFPAs are proposed to be renumbered as PCX rules: OFFPA A-10, Subject: Broker Responsibility on Print-Throughs, as PCX Rule 6.46(d). In addition, the Exchange seeks to

⁴ 15 U.S.C. 78f(b)(1).

⁵ 15 U.S.C. 78f(b)(6).

⁶ 15 U.S.C. 78f(d)(1).

⁷ 15 U.S.C. 78s(d).

⁸ 17 CFR 200.30-3(a)(12).

provisions, eliminating superfluous provisions, and incorporating current policies and procedures into the text of PCX Rule 6.

Specifically, the Exchange proposes to change PCX Rule 6.44 governing the registration of floor brokers. As proposed, the Exchange will post, for at least 10 days on the bulletin board located on the Exchange floor, the name of each applicant for registration as a floor broker that has successfully passed the prescribed floor broker examination.⁷

The Exchange also proposes to add a provision to PCX Rule 6.45 requiring floor brokers that act as such in respect of FLEX Options contracts to have one or more Letter(s) of Authorization on behalf of such Floor Brokers issued by a Clearing Member in accordance with Rule 8.115(b).

The Exchange also proposes to clarify the types of orders referred to in OFPA D-4, which is proposed to be renumbered as PCX Rule 6.46(f). Specifically, where floor brokers may accept orders that bid for or offer a specified number of contracts and no less, the Exchange proposes to codify that these orders include orders designated as "fill or kill," "all or none," or "immediate or cancel," (including such orders specifying that any unfilled portion of a multiple order is to be immediately canceled). However, floor brokers must assure that all such orders (including the contingency) are vocalized in the trading crowd, and that the bid or offer is not disseminated.

Next, the Exchange proposes to change PCX Rule 6.46, Commentary .02. Currently, the Commentary states that a floor broker's use of diligence requires that he make all persons in the trading crowd aware of his request for a quotation. The PCX proposes to require that a floor broker make only reasonable attempts to make all persons in the crowd aware of each request for a quote.

The Exchange proposes to add PCX Rule 6.47(c)(5), relating to crossing of

solicited orders, to permit a floor broker to step out of a trading crowd to solicit interest after announcing an order, and then return to the crowd without re-announcing the order if he remained within hearing distance while outside the crowd.

Finally, the Exchange proposes to adopt PCX Rule 6.49(a) to provide that floor brokers who are required to establish and maintain error accounts pursuant to PCX Rule 4.21 may only use such accounts for the purpose of correcting bona fide errors.

III. Discussion

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,⁸ and, in particular, with the requirements of section 6(b) of the Act.⁹ The proposal would modify certain rules relating to floor brokers by clarifying existing provisions, eliminating unnecessary provisions, and codifying current policies and procedures. By clarifying and updating its rules and obligations for its members, the Commission believes the proposal will promote just and equitable principles of trade in accordance with section 6(b)(5) of the Act.¹⁰

The Commission believes that the Exchange's proposal to eliminate the current requirement that the Option Floor Trading Commission review and approve each floor broker application, and instead require only that an applicant's name be posted on the bulletin board for an extended ten calendar day period is appropriate and consistent with the Act. The Commission believes that posting each applicant's name on the floor of the Exchange for ten days will provide ample opportunity for members to bring any concerns they have regarding an applicant to the attention of the Exchange's Membership Committee before the floor broker's application for membership becomes effective. Further, the Commission notes that the Exchange's rule governing registration of floor brokers continues to require that all applicants pass an examination prescribed by the Exchange, thus imposing an objective standard that must be met for registration as a floor broker.¹¹

The Commission also finds that the Exchange's proposal to eliminate the

current requirement that floor brokers make all persons in the trading crowd aware of each request for a quote is consistent with the Act. The Exchange represented that the current rule is not feasible for floor brokers dealing with large, active trading crowds. Thus, the Exchange proposed to require floor brokers to make reasonable attempts to notify all persons in the crowd of such requests. The Commission recognizes that it can be difficult to ensure that in fact every person in a large, active crowd is in a position to hear requests for quotes, and finds that it is appropriate and consistent with the Act to allow floor brokers to meet their obligation by making reasonable attempts to make all persons in the crowd aware of requests for quotes. However, the Commission expects that the Exchange will monitor actions taken by floor brokers under this rule to ensure that good faith and reasonable efforts are made to reach all persons in the crowd regardless of the size of the crowd. Further, floor brokers remain obligated under PCX Rule 6.46 to use due diligence in executing orders at the best price or prices available, which includes ascertaining whether a better price than that which is displayed at the time is being quoted by another floor broker or market maker.

The Commission finds that the Exchange's proposed rule that would allow a floor broker, when crossing solicited orders, to step out of a crowd to solicit interest after announcing an order, and then return to the crowd without re-announcing the order if he remained within hearing distance of the crowd is consistent with the Act. If there is no expressed interest within the trading crowd for an order, this rule will allow floor brokers to attempt to solicit interest from outside the crowd, *i.e.*, via telephone, without requiring the floor broker to re-announce the order if he remained within hearing distance. The Commission believes that this may facilitate the execution of orders in a more efficient manner.

The Exchange proposed a new rule to require that floor brokers that are required to establish error accounts only use such accounts for the purpose of correcting bona fide errors. The Commission finds that this new rule should prevent manipulative acts and practices because it prohibits all other types of transactions from being executed in these account. Floor brokers are limited in the types of transactions that they may execute. Thus, this rule should add another level of oversight to ensure that floor brokers do not engage in improper transactions.

eliminate superfluous language currently contained in the OFPA. OFPA A-11, Subject: Broker Responsibility to Cancel Best Bid or Offer, as PCX Rule 6.46(e); OFPA D-4 Subject: Use of Orders Which Specify More than One Contract, as PCX Rule 6.46(f); OFPA A-6, Subject: Responsibility of Floor Brokers in Effecting a Cross Transaction, as PCX Rules 6.47(d), (e) and (f); OFPA A-9, Subject: Discretionary Transactions (Floor Brokers), as PCX Rule 6.48(b); OFPA B-10, Subject: Discretionary Transactions by Market Makers, as PCX Rule 6.48(c); OFPA A-2, Subject: Floor Broker Acting As Both Principal and Agent in the Same Transaction, as PCX Rule 6.50.

⁷ Similar changes are proposed for registration of market makers under PCX Rule 6.33. See Securities Exchange Act Release No. 42035 (Oct. 19, 1999), 64 FR 57681 (Oct. 26, 1999) (File No. SR-PCX-99-13).

⁸ In approving this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See PCX Rule 6.44(a).

Finally, by consolidating rules affecting floor brokers in one section of the PCX rules, the Commission believes that PCX members and other interested parties will have easier access to relevant information. The Commission believes that the rule consolidation will assist floor brokers in understanding their obligations, and thus facilitate their compliance with the rules.

IV. Amendment No. 2

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice in the **Federal Register**. Amendment No. 2 makes technical, non-substantive changes to the proposal, such as changing the titles of two subparagraphs of PCX Rule 6.47 to better reflect their purpose; reflecting that additional subparagraphs were added to PCX Rule 6.47(b); and deleting language in a commentary that duplicates language proposed in PCX Rule 6.47(d).

The Commission finds that PCX's proposed changes in Amendment No. 2 clarify the proposed rule change and raises no new regulatory issues. Further, the Commission believes that Amendment No. 2 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. 2 is appropriate and consistent with section 19(b)(2) of the Act.¹²

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 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 at 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.

SR-PCX-99-45 and should be submitted by July 9, 2001.

VI. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-PCX-99-45), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-15218 Filed 6-15-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44402; File No. SR-PCX-2001-19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Rules Under the Minor Rule Plan

June 8, 2001.

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 4, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 proposes to increase the fines imposed on ETP Holders, ETP Firms or associated persons of an ETP Firm of its wholly-owned subsidiary, PCX Equities, Inc. ("PCXE" or "Cooperation") for violating the Exchange rules under the Minor Rule Plan.

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 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 Exchange proposes to amend PCXE's rules governing Minor Rule Plan violations to increase most fines because the Exchange believes that: (1) the current fines are too low to deter violations of PCXE rules; and (2) an increase in the current fines will more adequately sanction violations of the PCXE's order-handling and investigating rules. Many of these violations are processed under the Minor Rule Plan.³

Disruptive conduct on the quality floor is currently not fined for a first violation, fined \$250 for a second violation and \$500 for a third. Multiple violations are calculated on a running two-year basis. Under the proposed increases, these fines will be \$500 for a first violation, \$2,000 for a second and \$3,500 for a third calculated on the same two-year basis.

More serious violations such as a member's failure to cooperate with a PCX examination of its financial responsibility or operational condition, will be fined \$2,000 for a first violation, \$4,000 for a second violation, and \$5,000 for a third violation. A member that impedes or fails to cooperate in an Exchange investigation will be fined \$3,500 for a first violation, \$4,000 for a second and \$5,000 for a third. Less serious violations such as fines or improper dress under the PCXE dress code remains the same at \$100 for the first violation, \$250 for the second and \$500 for the third. Under the proposed rule, the Enforcement Department would continue to exercise its discretion under PCXE Rule 10.12(j) and takes cases out of the Minor Rule Plan to pursue them as formal disciplinary matters if the facts or circumstances warrant such action. The Exchange's proposal also includes amendments to PCXE's Equity Floor Procedure Advices

³ The Exchange notes that when it imposes a sanction in excess of \$2,500, it must comply with Rule 19d-1 under the Act. 17 CFR 240.19d-1. Telephone conversation between Cindy Sink, Senior Attorney, Regulatory Policy, PCX, and Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, on June 8, 2001.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 U.S.C. 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹² 15 U.S.C. 78s(b)(2).