

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>8</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 CBOE has requested that the Commission waive the 30-day operative date so that the CBOE can implement the proposed rule change as quickly as possible. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period.<sup>9</sup>

#### 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 CBOE. All submissions should refer to SR-CBOE-2002-33 and should be submitted by July 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</sup> For purposes 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>10</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46104; File No. SR-CHX-2002-12]

### Self Regulatory Organizations; The Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change To Amend the Rules Relating to the Composition of the CHX's Minor Rule Violation Panel

June 24, 2002.

On April 26, 2002, The Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend the rules relating to the composition of the CHX's Minor Rule Violation Panel ("Panel"). Under the proposal, the CHX would modify the composition of the Panel, from a Panel that consists of (1) one member of the Rules Subcommittee; (2) one member of the Committee on Floor Procedure who is not on the Rules Subcommittee; and (3) one floor member who is not on the Committee on Floor Procedure or on any of its subcommittees (such as the Rules Subcommittee), to a Panel that consists of (1) one member of the Rules Subcommittee; (2) one member of the Committee on Floor Procedure (whether or not he or she is on the Rules Subcommittee); and (3) one floor member who is not on the Committee on Floor Procedure, but could be on one or more of its subcommittees (but not the Rules Subcommittee).

The proposed rule change was published for comment in the **Federal Register** on May 20, 2002.<sup>3</sup> The Commission received no comments on the proposal.

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<sup>4</sup> and, in particular, the requirements of section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5)

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> See Securities Exchange Act Release No. 45921 (May 14, 2002), 67 FR 35602.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f.

of the Act<sup>6</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest by ensuring that potential minor rule violations are addressed as soon as possible.

In addition, the Commission finds the proposal is consistent with section 6(b)(7) of the Act<sup>7</sup> because the proposal provides a fair procedure for the disciplining of members and persons associated with members. The Commission also finds the proposal is consistent with section 6(b)(8) of the Act,<sup>8</sup> in that it furthers the statutory goal of providing a fair procedure for disciplining the CHX's members and associated persons. Finally, the Commission finds the proposal is consistent with Securities Exchange Act Rule 19d-1(c)(2)<sup>9</sup> that governs minor rule violation plans.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>10</sup>, that the proposed rule change (SR-CHX-2002-12) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46098; File No. SR-PCX-2002-11]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc. To Limit the Number of Exchange Memberships That Any Person, Associated Person, or Group of Associated Persons May Own

June 20, 2002.

#### I. Introduction

On February 6, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

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

<sup>7</sup> 15 U.S.C. 78f(b)(7).

<sup>8</sup> 15 U.S.C. 78f(b)(8).

<sup>9</sup> 17 CFR 240.19d-1(c)(2).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to limit the number of exchange memberships that any person, associated person, or group of associated persons may own. The proposed rule change was published for comment in the **Federal Register** on April 30, 2002.<sup>3</sup> The Commission received three comments on the proposed rule change.<sup>4</sup> In addition, the PCX submitted one letter in response to comments.<sup>5</sup> This order approves the proposed rule change.

## II. Description of Proposal

The rule change adopts PCX Rule 1.21(d), which will limit to 15% the number of Exchange memberships that any person, associated person, or group of associated persons may directly or indirectly beneficially own, or control the voting rights of. In addition, the rule change permits exceptions to the 15% limit if they are expressly authorized by the Exchange's Board of Governors ("Board") through a two-thirds majority of those Governors voting at a meeting at which a quorum is present, provided that such authorization must be approved by not less than a majority of all Governors. In its filing, the Exchange represented that it currently has 552 authorized PCX memberships and that the seat ownership limit under the rule change would be 82.

## III. Summary of Comments and Response to Comments

As noted above, the Commission received three comment letters regarding the proposed rule change. All of the commenters opposed the rule change. In addition, the PCX submitted a letter in response to comments.

All of the commenters asserted that the proposed rule change would entrench the PCX's current management, which the commenters maintain is responsible for a drop in the value of PCX memberships. In addition, two commenters asserted that the PCX has not fulfilled a promise to stabilize seat prices after the sale of its equity

floor to Archipelago.<sup>6</sup> Two commenters expressed concerns over the PCX's continuation of the collection of payment for order flow and the reinstatement of a monthly assessment of \$750.00 on empty seats.<sup>7</sup> One commenter also expressed concern about being forced to sell seats at a loss in order to comply with the proposed rule change.<sup>8</sup>

In response, the PCX pointed out that all of the comments were submitted on behalf of persons who own Exchange seats as an investment and do not trade securities on the exchange. With respect to the comments regarding payment for order flow, the monthly assessment, and stabilizing seat prices after the Archipelago transaction, the PCX stated that such concerns are not relevant to whether the proposed rule change should be approved.

Two commenters asserted that the exception provision was vague because it gives the Board discretion to grant exceptions to the 15% limit without specifying conditions for those exceptions.<sup>9</sup> In response, the PCX asserted that the Board has a legal obligation to fairly and legitimately exercise its authority considering the best interest of the Exchange. The PCX also asserted that the Board would not be permitted to arbitrarily enforce or waive any Exchange rule for the sole benefit or detriment of one group or individual.

One commenter maintained that the proposed rule change would impose a change that would fundamentally affect the rights of owners without the same 75% majority vote required to change PCX Constitution. In response, the PCX asserted that the proposed rule change amends PCX Rules and not the PCX Constitution.<sup>10</sup> The PCX cited Article XVII, Section 1 of the PCX Constitution, which states that "The Board of Governors may from time to time amend the Rules of this Exchange by affirmative vote of not less than a majority of the Governors voting at a meeting at which a quorum is present."

The PCX represented that the proposal should assure that the Exchange's memberships do not become unduly concentrated and subject to domination by a particular member or member organization's own interest. In addition, the PCX stated that the proposed rule change is designed to promote just and equitable principles of

trade and to protect investors and the public interest.

## IV. Discussion

After careful consideration of the proposal, all the comments, and the response to comments, the Commission has determined to approve the proposed rule change. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>12</sup> which provides, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, the Commission believes that the proposed rule change is consistent with the requirement of section 6(b)(3) of the Act<sup>13</sup> that the Exchange's rules assure a fair representation of its members in the selection of its directors and administration of its affairs.

The Commission agrees with the PCX that the rule change should prevent PCX's memberships from becoming overly concentrated in any one person or group of persons. As a result, the rule change should prevent a person or group of persons from exercising undue control over the affairs of the Exchange.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-PCX-2002-11) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> Securities Exchange Act Release No. 45793 (April 22, 2002), 67 FR 21315 (April 30, 2002).

<sup>4</sup> Letters from Paul Liang, Managing Member, PBL Partners, LLC, to Jonathan G. Katz, Secretary, Commission, dated March 8, 2002 ("Liang Letter"); David J. Stern, Esquire, to Jonathan G. Katz, Secretary, Commission, dated March 20, 2002 ("Stern Letter"); and Craig Kinda, Seat Owner, to Jonathan G. Katz, Secretary, Commission, dated March 22, 2002 ("Kinda Letter").

<sup>5</sup> Letter from Michael T. Lempres, Executive Vice President, General Counsel, and Corporate Secretary, PCX, to Ms. Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 31, 2002 ("PCX Letter").

<sup>6</sup> Liang Letter and Stern Letter.

<sup>7</sup> Liang Letter and Stern Letter.

<sup>8</sup> Stern Letter.

<sup>9</sup> Liang Letter, Stern Letter.

<sup>10</sup> PCX Letter.

<sup>11</sup> In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78f(b)(3).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).