

interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) under the Act<sup>11</sup> normally does not become operative prior to 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The NYSE seeks to have the Commission waive the five-day pre-filing notice requirement and have the proposed rule change become operative immediately due to the technical nature of the proposal.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change immediately operative<sup>12</sup> and waive the five-day pre-filing notice requirement. The Commission notes that the proposed rule change does not present any substantive issues, but only corrects an erroneous statutory reference in Section 102.04 of the Manual. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule 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 proposed rule change, as amended, is consistent with the Act. Persons making written

submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to File No. SR-NYSE-2002-25 and should be submitted by September 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-22096 Filed 8-28-02; 8:45 am]

BILLING CODE 8010-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46406; File No. SR-PCX-2002-51]

#### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Listing Maintenance Standards for Options

August 23, 2002.

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 August 22, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") 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 Exchange. 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

PCX is proposing to amend PCX Rule 3.7 to allow the Exchange to add new

series of options when such series are available for trading on one or more other options exchanges and the underlying security met the market price per share requirements at the time that a competing exchange added such series. The text of the proposed rule change is below; new language is italicized.

\* \* \* \* \*

#### Withdrawal of Approval of Underlying Securities

Rule 3.7(a) The approval of an underlying security for exchange transactions shall be withdrawn by the Exchange if the underlying security fails to meet the then current requirements necessary to maintain such approval or for any reason the Exchange deems necessary. In the event the Exchange withdraws approval, no additional series of option contracts of the class covering that underlying security shall be opened; provided, however, that where exceptional circumstances have caused the noncompliance of an underlying security with Subsection (B) or (C) of Section 1 of Commentary .01 or Section 2 or 3 of Commentary .01 hereunder, the Exchange may, in the interest of maintaining a fair and orderly market or for the protection of investors, open additional series of option contracts of the class covering the subject underlying security.

(b) No change.

Commentary:

.01—No change.

.02—In connection with Rule 3.7(a) and Commentary .01.3 thereto, the Exchange shall direct that no additional series of options contracts of the class covering an underlying security be opened at any time when the market price per share of the subject underlying security is less than \$3.00. Subject to Paragraph 3 of Commentary .01 above, the market price per share of the underlying security will be determined as follows:

1. For intra-day series additions, the last reported trade in the primary market in which the security is traded at the time the Exchange determines to add these additional series intra-day;

2. For next-day series additions, the closing price reported in the primary market in which the security is traded on the last trading day preceding the day on which such series additions are authorized; and

3. for expiration series additions, the closing price reported in the primary market in which the security is traded on the last trading day preceding expiration Friday.

*Notwithstanding this Commentary .02, the Exchange may add series of*

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> *Id.*

<sup>12</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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

options covering an underlying security when such series are available for trading on one or more other options exchanges provided that the underlying security met the market price per share requirements at the time that such series were added by a competing registered national securities exchange.

.03-.11—No change.

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX 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 III below. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

PCX Rule 3.7 (Withdrawal of Approval of Underlying Securities) specifies continued listing requirements for securities underlying options traded on the Exchange and restricts the Exchange from adding new series of options in the event that the underlying security fails to meet certain criteria. The rule currently provides that the Exchange may not list additional series if, *inter alia*: (1) for next day series additions, the underlying security closed below \$3 on the previous trading day in the primary market in which the security is traded; (2) for intra-day series additions, the last reported trade in the underlying security was below \$3 on the primary market in which the security is traded at the time the Exchange determines to add the new series; and (3) for new series following an options expiration, the closing price of the underlying is below \$3 on the last trading day preceding expiration Friday on the primary market in which the security is traded.<sup>3</sup>

<sup>3</sup> The Exchange's other continued listing guidelines require that the Exchange take action to withdraw an option from listing unless the issuer makes timely reports as required by any applicable sections of the Securities Exchange Act of 1934; maintains a minimum of 6,300,000 shares of the underlying security held by persons other than those who are subject to the requirement of Section 16(a) of the Securities Exchange Act of 1934, as amended; maintains a minimum of 1,600 holders of the underlying security; and maintains a volume of

Although the continued listing requirements are uniform among the five options exchanges, the application of those standards in the current market environment has resulted in situations where not all exchanges may compete in the same options series. For example, if one exchange adds a new options series when the underlying security trades above the \$3.00 price threshold, it may continue to trade options on that series even if the price of the underlying security subsequently falls below \$3.00. If no other options exchange had added that series when it was eligible for listing, then the first exchange to add the series would be the only one authorized to trade that series despite the fact that members of other exchanges have customer orders to trade that series. Due to the extreme volatility of prices in the marketplace, the PCX would not be able to list actively-traded options series where the price of the underlying security falls below the \$3.00 threshold before the Exchange elects to add the series.

To address this situation, the Exchange proposes to adopt a new rule change that would allow it to list additional series that are being quoted by at least one other exchange. The Exchange has narrowly drafted this proposed rule change to address the circumstances where an option series is already available to the investing public, but cannot be added by the Exchange due to timing.<sup>4</sup> Therefore, the Exchange's proposal will not add any new series for trading that are not already available to investors on a competing exchange.

The Exchange believes that this proposal will promote competition in the marketplace by assuring that the Exchange may compete in all series that are quoted by other options exchanges. This will place the Exchange on a level playing field with its competitors.

#### 2. Statutory Basis

The Exchange believes that this proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

trading in the underlying security of at least 1,800,000 shares in the preceding twelve months.

<sup>4</sup> The Exchange does not propose to change other requirements currently contained in Rule 3.7 (such as the number of shares that must be held by non-insiders, number of holders and trading volume).

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

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not received any written comments from members or other interested parties.

## III. 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. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2002-51 and should be submitted by September 19, 2002.

## IV. Commissions' Findings and Order Granting Accelerated Approval of 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, and in particular, the requirements of Section 6(b)(5) of the Act.<sup>7</sup> The Commission believes investors benefit from the competition among options exchanges that results when options are listed on more than one options exchange; and that investors are sufficiently protected, even though PCX will be permitted to list a series of option contracts when the market price of the underlying security is below \$3, because all of the other maintenance listing requirements of the

<sup>7</sup> 15 U.S.C. 78f(b)(5).

Exchange must still be complied with, and the market price of the underlying security was at or above \$3 when it was listed on the first options exchange. Therefore, the Commission finds that proposed rule change will promote just and equitable principles of trade, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.<sup>8</sup>

PCX has requested that the proposed rule change be given accelerated approval pursuant to Section 19(b)(2) of the Act.<sup>9</sup> The Commission believes accelerated approval of the proposal would enhance competition among the options exchanges. Accordingly, the Commission finds good cause, consistent with Section 6(b)(5) of the Act,<sup>10</sup> to approve the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-PCX-2002-51) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-22095 Filed 8-28-02; 8:45 am]

**BILLING CODE 8010-01-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket NHTSA 2001-8677; Notice 4]

#### Public Meeting on Early Warning Reporting Procedures

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Office of Defects Investigation (ODI), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting to discuss the manner in which Early Warning Reporting (EWR) information required to be submitted to ODI by motor vehicle and motor vehicle equipment manufacturers will be submitted to, and retained by, the agency. On July 3, 2002, NHTSA issued a final rule implementing the EWR

<sup>8</sup> 15 U.S.C. 78f(b)(5). In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 240.30-3(a)(12).

provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. At this meeting, NHTSA will discuss the methods by which EWR information must be submitted, security for that information, acknowledgement of receipt of that information, and other technical aspects associated with those submissions. The agency will also respond to questions about those issues from the public.

**DATES:** The Agency's public meeting relating to EWR data submission will be held on Wednesday, September 24, 2002, beginning at 10 a.m. in Room 2230 of the United States Department of Transportation, 400 Seventh St., SW (NASSIF Building), Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Julia Goldson at (202) 366-9944 or at [jgoldson@nhtsa.dot.gov](mailto:jgoldson@nhtsa.dot.gov).

**SUPPLEMENTARY INFORMATION:**

Transcripts of this meeting will be available for public inspection in the DOT Docket Room in Washington, DC, within four weeks after the meeting. The DOT Docket Room is open to the public from 10 a.m. to 5 p.m. The transcript may also be accessed electronically at <http://dms.dot.gov>, at docket NHTSA 2001-8677; Notice 4.

We recommend that all visitors arrive at least 45 minutes early to sign in and pass through security checkpoints. Visitors to the building should enter through the Southwest Lobby to sign in and be escorted upstairs.

NHTSA will provide auxiliary aids to participants, as necessary. Any person desiring such auxiliary aids (*e.g.*, sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), should contact Julia Goldson at (202) 366-9944, by COB Monday, September 16, 2002.

Issued: August 22, 2002.

**Kenneth N. Weinstein,**

*Associate Administrator for Safety Assurance.*

[FR Doc. 02-22081 Filed 8-28-02; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34241]

#### Central Michigan Railway Company— Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT) has agreed to grant limited bridge trackage rights to Central Michigan Railway Company (CMGN) over approximately 4.0 miles in Saginaw, MI.<sup>1</sup> The trackage rights extend approximately from the clearance point at the intersection of the CMGN/CSXT connection track of the Grand Rapids Wye Track, through CSXT's Saginaw main, yard, and connection trackage to CSXT's ownership point at the connection with Huron and Eastern Railway Company (HESR) at Saginaw (milepost CBB 2.0) on CSXT's Bad Axe Subdivision.

The purpose of the trackage rights is to enable CMGN to interchange certain traffic with HESR at approximately Buena Vista Station, about 1 mile east of CSXT's Saginaw yard, thereby promoting operating efficiencies.<sup>2</sup>

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978)*, as modified in *Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980)*.

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings referring to STB Finance Docket No. 34241, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC, 20423-0001. In addition, a copy of each pleading must be served on Rose-Michele Weinryb, 1300 19th Street, NW., 5th Floor, Washington, DC, 20036.

<sup>1</sup> An unredacted version of the trackage rights agreement, dated June 26, 2001, was concurrently filed under seal along with a motion for a protective order. That motion was granted and a protective order was issued in a decision served on August 22, 2002.

<sup>2</sup> Pursuant to 49 CFR 1180.4(g), a railroad must file a verified notice with the Board at least 7 days before the trackage rights are to be consummated. In its verified notice, CMGN indicates that the transaction was consummated in October 2001. CMGN states that it failed to file its exemption with the Board prior to exercising the trackage rights and now seeks to obtain the requisite authority for the subject transaction.