

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 Amendment Nos. 3, 4, 5, and 7 that are filed with the Commission, and all written communications relating to Amendment Nos. 3, 4, 5, and 7 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 NASD. All submissions should refer to File No. SR-NASD-2003-85, and should be submitted by October 21, 2003.

## VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>61</sup> that the proposed rule change (SR-NASD-2003-85), as amended, be, and hereby is, approved.<sup>62</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>63</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-24757 Filed 9-29-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48526; File No. SR-NSCC-2003-14]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Anonymity Features on Trading Systems

September 23, 2003.

#### I. Introduction

On June 19, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on June 23, 2003, amended proposed rule change SR-NSCC-2003-14 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on July 11, 2003.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

Pursuant to the rule filing, NSCC is adding language to Section II.C.1 of NSCC Rules and Procedures<sup>3</sup> whereby NSCC may receive locked-in trade data from a self-regulatory organization ("SRO") that operates a trading system that provides trade anonymity.<sup>4</sup> If trade data received from an SRO is from an anonymous trade, NSCC in reporting back to its members may report such trades identifying as the contraside an acronym selected by the SRO instead of naming the actual contraside. In the case of anonymous trades, the contraside shall be deemed to be one of the entities the SRO includes as an entity eligible to participate in the anonymous trading system. New language is also being added to Section II.C.1 to provide that if NSCC ceases to act for a member which is the unnamed contraside of an anonymous trade or trades and if NSCC determines that the anonymous trade or trades should be exited from trade processing, the SRO providing the anonymous trading system will be responsible for identifying to other members which of their trades are with the member for which NSCC has ceased to act.

In connection with this filing, the National Association of Securities Dealers, Inc. ("NASD") filed and the Commission approved a proposed rule change that allows the NASD to add an anonymity feature to the Nasdaq Stock Market's SuperMontage trading system.<sup>5</sup>

#### I. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>6</sup> The trade anonymity feature is a valued service that trading

systems like the Nasdaq want to be able to provide to their members. The Commission finds that by amending its rules to provide for the clearance and settlement of anonymous trades, NSCC's proposed rule change should help to promote the prompt and accurate clearance and settlement of such transactions.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-2003-14) be and hereby is approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-24749 Filed 9-29-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48533; File No. SR-PCX-2003-4]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Posting Period for Membership Applications

September 24, 2003.

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 26, 2003, 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

The Pacific Exchange, Inc. ("PCX" or "Exchange") is proposing to amend its rules to modify the period during which

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

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

<sup>2</sup> Securities Exchange Act Release No. 48122 (July 2, 2003), 68 FR 41410.

<sup>3</sup> NSCC recently added a new Section II.C.1 to its rules. Securities Exchange Act Release No. 48141 (July 8, 2003), 68 FR 42153 (July 16, 2003) [File No. SR-NSCC-2003-12].

<sup>4</sup> In a trading system that provides trade anonymity, the identity of at least one side of a trade is not revealed to the other side at the time of the trade.

<sup>5</sup> Securities Exchange Act Release Nos. 48088 (June 25, 2003), 68 FR 39605 (July 2, 2003) [File No. SR-NASD-2003-85] and 48526 (September 23, 2003).

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>61</sup> 15 U.S.C. 78s(b)(2).

<sup>62</sup> Nasdaq intends to implement the proposed rule change on September 29, 2003. Telephone conversation between Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission, on September 23, 2003.

<sup>63</sup> 17 CFR 200.30-3(a)(12).

the name of an applicant for membership must be published to other Exchange members. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

## 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 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 IV below. The 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

The PCX reviewed its membership posting requirements relative to those of other option exchanges. In doing so, the PCX concluded that the current membership posting requirements were enacted at a time when electronic communication was not as fast or as prevalent as it is today. As a result, the Exchange's current rule requiring a new applicant for membership be posted for ten (10) calendar days is antiquated and unduly burdensome on the potential applicant. Therefore, the Exchange is proposing to amend its Rule 1.6(b) and Rule 6.44(a). The proposed rule will require that following receipt of a membership application, the Exchange shall post the applicant's name for a period of three (3) business days. The PCX Membership Committee may shorten or waive the posting period for an applicant if it determines that extenuating circumstances warrant such action. Applicants seeking to shorten or waive the posting period are required to submit a written statement that sufficiently describes the basis for their request. In reviewing a request to shorten or waive the three (3) business day posting period, the Membership Committee will consider factors such as the applicant's capitalization, options industry experience, disciplinary history, affiliations with other self regulatory organizations and any other factors deemed relevant by the Committee. An applicant whose request to shorten or waive the three (3) business day posting period is denied

will not be given the opportunity to appeal such decision.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of section 6(b)(5),<sup>4</sup> in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

#### 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

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to section 19(b)(3)(A)(i) of the Act<sup>5</sup> and subparagraph (f)(6) of Rule 19b-4<sup>6</sup> thereunder.<sup>6</sup> Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this 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 the Commission may designate, it has become effective pursuant to

section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

Pursuant to Rule 19b-4(f)(6)(iii),<sup>9</sup> a proposed "non-controversial" rule change 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. The PCX has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.<sup>10</sup>

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>11</sup> Accelerating the operative date will allow for a more efficient and effective market operation by enabling Exchange access to new members in a more timely manner. For this reason, the Commission designates the proposed rule change to be effective and operative immediately.

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 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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>10</sup> In its original filing, PCX inadvertently also had requested that the Commission waive the five day pre-filing period. PCX had, in fact, already provided the Commission with the appropriate five day notice. Telephone conference among Steven B. Matlin, Peter D. Bloom, Regulatory Policy, PCX, and Geoffrey Pemble, Special Counsel, Division, Commission (September 16, 2003).

<sup>11</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>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(i).

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

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 the File No. SR-PCX-2003-44 and should be submitted by October 21, 2003.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-24753 Filed 9-29-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48532; File No. SR-PCX-2003-43]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Elimination of the Posting Period for New ETP Holder Applicants and To Eliminate PCXE Rule 2.3(b)

September 24, 2003.

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 26, 2003, 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. On September 22, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>12</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.

<sup>3</sup> See letter from Steven B. Matlin, Regulatory Policy, PCX, to Geoffrey Pemble, Special Counsel, Division of Market Regulation ("Division"), Commission, dated September 17, 2003. In Amendment No. 1, the PCX noted that a sentence contained in its original filing ("Furthermore, the Exchange believes the elimination of this requirement is consistent with Section 6(b)(3) of the Act") should have been placed in the "Basis" section of the filing, rather than the "Purpose" section. In addition, the Exchange provided additional justification for its proposal under Section 6(b)(3) of the Act. This additional text is contained in the "Basis" section below.

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

The PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange, the equities trading facility of PCXE, by eliminating PCXE Rule 2.3(b) that provides for a ten-day posting period of the name of new ETP Holder applicants in the Exchange's Weekly Bulletin. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

### 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 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 IV below. The 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

As part of its continuing efforts to enhance participation on the Archipelago Exchange ("ArcaEx") facility, the PCX is proposing to expedite the timeframe in which new ETP Holders<sup>4</sup> shall be granted approval for an ETP<sup>5</sup> to effect transactions on the Exchange's trading facility. The Exchange is proposing to eliminate PCXE Rule 2.3(b) so that the required posting period for new ETP Holders is eliminated.

The Exchange's current rules governing application procedures for ETP Holders are set forth in PCXE Rule 2.3. Presently, Rule 2.3(b) provides that upon receipt of an application for an ETP, the applicant's name will be published for at least a ten calendar day period in the Exchange's Weekly Bulletin before approving or rejecting the application. Historically, membership-based exchanges in which members have ownership and involvement in determining who should be granted access to their facilities utilized posting rules to notify members

of parties interested in joining the exchange. The Exchange believes that because PCXE is a demutualized organization in which there are no ownership or voting rights, the posting period is not a critical part of the application process. Accordingly, the Exchange proposes to amend PCXE Rule 2.3 to eliminate subsection (b) that defines the posting period. The Exchange intends to retain all other aspects of the application process as noted in PCXE Rule 2.3 with respect to determining whether to approve an application for an ETP Holder.

The Exchange believes that the elimination of the aforementioned posting process promotes a more efficient and effective market operation by enabling Exchange access to new ETP Holders in a more timely manner.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>7</sup> in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

Furthermore, the Exchange believes the elimination of this requirement is consistent with Section 6(b)(3) of the Act.<sup>8</sup> While PCXE is demutualized and therefore does not contain the traditional approval process for its applicants as a membership based exchange, the fair representation requirements of Section 6(b)(3) of the Act would still be satisfied after the proposed rule change is approved through the ETP representative on the PCX Board of Governors.<sup>9</sup>

#### 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

Written comments were neither solicited nor received.

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

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

<sup>8</sup> 15 U.S.C. 78f(b)(3).

<sup>9</sup> See Amendment No. 1, *supra* note 3.

<sup>4</sup> See PCXE Rule 1.1(n) (definition of "ETP Holder").

<sup>5</sup> See PCXE Rule 1.1(m) (definition of "ETP").