

in general,<sup>7</sup> and Section 6(b)(5) of the Act in particular,<sup>8</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission believes that an earlier deadline for preopening orders may operate to reduce the aggregate amount of preopening orders received by a CHX specialist and may thereby better enable the CHX specialist to manage his position and fulfill his specialist duties by giving him time to fully evaluate his position and to make a professional price assessment that would inform his executions once trading commences for the day. Furthermore, the Commission believes that an 8:20 (CT) deadline for CHX preopening orders may better enable CHX specialists to comply with SuperMontage rules and procedures governing the “trade or move” functionality.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval will allow the Exchange to immediately provide specialists with a greater ability to manage their risks.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act<sup>9</sup>, that the proposed rule change and Amendment No. 1 (SR-CHX-2003-23) be and hereby are approved on an accelerated basis.

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

**Jill M. Peterson,**

Assistant Secretary.

[FR Doc. 04-405 Filed 1-8-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49013; File No. SR-PCX-2003-62]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. To Amend Its Rules Relating to Initial Listing Requirements for Securities Listed Under the Tier I and Tier II Designations

December 31, 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 November 4, 2003, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 17, 2003, the Exchange filed 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, as amended, from interested persons.

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

The Exchange proposes to amend its rules relating to initial listing requirements for securities listed under the Tier I and Tier II designations. The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

#### Rule 5

##### Listings

\* \* \* \* \*

#### Designation of Tier I Securities Initial Listing Requirements

Common Stock—Select Market Companies

Rule 5.2(c). In the case of common stock, the following Basic or Alternate Listing Requirements must be met:

##### Basic Listing Requirements

(1)-(3)—No change.

(4) Pre-tax income from continuing operations of at least \$750,000 [and net income of at least \$400,000, excluding non-recurring and extraordinary items] in the last fiscal year or two of the last three fiscal years.

(5)—No change.

##### Alternate Listing Requirements

(1)-(5)—No change.

##### Commentary

.01-.03—No change.  
(d)-(j)—No change.

#### Designation of Tier II Securities Initial Listing Requirements

Common Stock—Development Stage Companies

Rule 5.2(k). In the case of common stock, the following Basic or Alternate Listing Requirements must be met:

##### Basic Listing Requirements

(1)-(3)—No change.

(4) *Net income from continuing operations* [Demonstrated net earnings] of at least \$100,000 [after taxes, excluding nonrecurring income and extraordinary items] in the last fiscal year or in two of the last three fiscal years, or total net tangible assets of \$2,500,000.

(5)-(6)—No change.

##### Alternate Listing Requirements

(1)-(4)—No change.

##### Commentary:

.01-.03—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, 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’s initial listing requirements for common stock under the Tier I and Tier II designations are set forth in PCXE Rules 5.2(c) and 5.2(k), respectively. In determining whether an issuer meets the applicable income requirements, each of the aforementioned rules provide for the exclusion of non-recurring and extraordinary items. The term “non-recurring” is not defined under

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

<sup>10</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> On December 17, 2003, the Exchange filed a Form 19b-4, which replaced the original filing in its entirety (“Amendment No. 1”).

Generally Accepted Accounting Principles ("GAAP"). As such, the Exchange proposes to amend PCXE Rules 5.2(c) and 5.2(k) to remove the term "non-recurring" and replace it with the term "income from continuing operations," a term the Exchange represents is recognized under GAAP. The Exchange believes that this change should remove any uncertainty in the initial listing process that existed for both issuers and investors.

In modifying the initial listing requirement for Tier I issuers, the Exchange also proposes to eliminate the requirement that an issuer have net income of at least \$400,000, excluding non-recurring and extraordinary items. The Exchange states that this change is proposed to be consistent with the initial listing requirements of another exchange.<sup>4</sup> The Exchange represents that this change is not expected to make the Exchange's Tier I listing requirements any more or less restrictive.

Under the proposed modifications to the initial listing requirements for Tier II issuers, the Exchange states that it does not propose to change the method upon which it calculates whether an issuer meets the income requirement. Under the existing rules, the Exchange states that it currently does not include both the income and corresponding expenses from nonrecurring and extraordinary items in calculating a potential issuers net earnings. The Exchange represents that the proposed change will have no effect on the Exchange's Tier II listing requirements.

## 2. Statutory Basis

The Exchange believes that the proposal furthers the objectives of Section 6(b)(5) of the Act<sup>5</sup> in that it is designed to promote just and equitable principles of trade 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.

### 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 with respect to the proposed rule change.

<sup>4</sup> See American Stock Exchange LLC Company Guide Section 101(a)(2).

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

## 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-PCX-2003-62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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-2003-62 and should be submitted by January 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>6</sup> 17 CFR 200.30-3(a)(12).

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Public Notice for Waiver of Aeronautical Land-Use Assurance, Gerald R. Ford International Airport, Grand Rapids, MI

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of intent of waiver with respect to land; correction.

**SUMMARY:** This document contains one correction to a notice and request for comments that was published in the **Federal Register** on Monday, December 22, 2003 (68 FR 71219). **Federal Register** document 03-31418, published December 22, 2003 (68 FR 71219), concerns a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of 3 parcels of land totaling approximately 16.33 acres. This correction revises the public comment period to read as follows:

**DATES:** Comments must be received on or before February 9, 2004.

All other information remains unchanged.

Issued in Romulus, Michigan on December 24, 2003.

**Irene R. Porter,**

*Manager, Detroit Airports District Office, FAA, Great Lakes Region.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Public Notice for Waiver of Aeronautical Land-Use Assurance; Quad City International Airport, Moline, IL

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of intent of waiver with respect to land.

**SUMMARY:** The Federal Aviation Administration (FAA) is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of Parcel OO-4, a 14.380-acre portion of Parcel OO (consisting of three Tracts: 1—3.787 acres, Tract 2—1.044 acres, and Tract 3—9.549 acres). Presently the land is vacant and used as open land for control of FAR Part 77 surfaces and compatible land use and is not needed for