

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 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 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-2004-05. 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-2004-05 and should be submitted by March 16, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49264; File No. SR-PCX-2003-49]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Eliminating the Requirement That Market Makers With No Public Accounts and Who Do Not Solicit Public Accounts, Maintain Certain Information Barriers**

February 17, 2004.

**I. Introduction**

On September 16, 2003 the Pacific Exchange, Inc. ("PCX" 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 eliminate the Information Barrier requirement set forth in PCXE Rule 7.26 for certain Market Makers. On December 16, 2003, PCX amended the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on January 12, 2004.<sup>4</sup> No comment letters were received on the proposal. This order approves the proposed rule change.

**II. Description of the Proposal**

The Information Barrier requirements set forth in PCXE Rule 7.26 are designed to provide safeguards to prevent the use or communication of material non-public information by market making firms (and affiliated broker-dealers) to inappropriately benefit business activities in which they may engage, such as investment banking or options market making. Such information could

relate to, for example, the Market Maker's customer and directed order flow or other information obtained by the Market Maker in the course of its business. PCX believes that such barriers help to ensure that market making firms do not illegally take advantage of or communicate such information to benefit their business activities, to the detriment of investors, customers, issuers and the integrity of the market.

For business reasons, certain registered Market Makers, or broker-dealers with which such Market Makers are affiliated, engage solely in proprietary trading. Accordingly, such firms do not maintain public customer accounts or solicit or accept orders or funds (and hence, would not accept directed order flow) from or on behalf of public customers, including broker-dealers and other securities firms. Under such circumstances, because the market making firm does not engage in any other business activities that may benefit from information obtained by the Market Maker in the course of the firm's market making activities, the Exchange believes that the concerns noted above which form the basis for the Information Barrier requirements set forth in PCXE Rule 7.26 do not apply.<sup>5</sup> Nevertheless, PCXE Rule 7.26 would require such a firm to develop and implement Information Barriers.

Under such circumstances, the Exchange believes that an Information Barrier requirement is not necessary and would impose an undue burden on the market making firm. Accordingly, the PCX proposes to eliminate this requirement in the limited circumstances where a market making firm and its affiliated broker-dealer neither maintain public customer accounts, nor solicit or accept public customer orders, including from broker-dealers and other securities firms (and does not accept directed order flow or utilize any order type which presupposes the participation of public customers), and engage solely in proprietary trading. The Exchange believes that this limited modification is consistent with the purposes of the rule. However, if the market making firm or its affiliated broker-dealer subsequently decides to maintain public customer accounts or solicit public customer accounts (and directed order flow or order types which presuppose the participation of public customers), then the requirements of PCXE Rule 7.26

<sup>5</sup> The proposed rule change is designed to accommodate the needs of these Market Makers. The current rule did not foresee the business conditions that currently exist which necessitate this change.

<sup>8</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 December 15, 2003 letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, and attachment ("Amendment No. 1"). Amendment No. 1 replaced and superseded the PCX's original filing in its entirety.

<sup>4</sup> Securities Exchange Act Release No. 49018 (January 5, 2004), 69 FR 01771.

would apply. Furthermore, this limited modification would not alter or adjust any other obligation imposed on Market Makers, including those set forth in PCXE Rules 7.21 (Obligations of Market Maker Authorized Traders)<sup>6</sup> and 7.23 (General Obligations of Market Makers).

### III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange<sup>7</sup> and, in particular, with the requirements of Section 6(b)(5) of the Act.<sup>8</sup> Specifically, the Commission finds that approval of the proposed rule change, as amended, is consistent with the Act 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 proposed rule change would amend PCXE Rule 7.26 to carve an exception where, even though a firm is registered as a Market Maker, or is an affiliated broker-dealer, it has no customer accounts, and engages solely in proprietary trading. The Commission believes that it is not necessary for a Market Maker, or its affiliated broker-dealer, that fits this limited exception, to be required to maintain an information barrier between the market making and other business activities. The Commission believes it is reasonable to remove a requirement that could become unduly burdensome, since the Market Maker, or its affiliated broker-dealers, is not engaged in activities that would inappropriately benefit other business activities within the firm. Furthermore, the Commission believes that the modification of PCXE Rule 7.26 may remove impediments that could hinder competition between a Market Maker fitting the limited exception, or its affiliated broker-dealer, and those Market Makers engaged in broader businesses. However, the Commission notes that, if in the future these Market Makers, or their affiliated broker-dealers, engage in other business activities, such as investment banking or options market making, or maintain customer accounts, solicit or accept public customer orders, the Commission expects that the Exchange will require

compliance with the Information Barrier requirements of PCXE Rule 7.26.

### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5).<sup>9</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-PCX-2003-49), as amended, 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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## DEPARTMENT OF STATE

[Public Notice 4628]

### Bureau of Political-Military Affairs; Administrative Debarments Involving Kam-Tech Systems, Ltd. and David Menashe

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Department of State has imposed administrative debarment pursuant to section 127.7(a) and (b)(2) of the International Traffic in Arms Regulations ("ITAR") (22 CFR parts 120 to 130) on persons convicted of a violation of such as to provide a reasonable basis for the Directorate of Defense Trade Controls to believe that the violators cannot be relied upon to comply with the Arms Export Control Act ("AECA") (22 U.S.C. 2778) or the ITAR in the future and which violation was established in accordance with part 128 of the ITAR.

**EFFECTIVE DATE:** Date of Order as specified for each person.

**FOR FURTHER INFORMATION CONTACT:** David Trimble, Director, Directorate of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 663-2700.

**SUPPLEMENTARY INFORMATION:** Section 127.7 of the ITAR authorizes the Assistant Secretary of State for Political-Military Affairs to issue an Order for Administrative Debarment against any person who has been found pursuant to

Part 128 of the ITAR to have committed a violation of the AECA or the ITAR of such character as to provide a reasonable basis for the Office of Defense Trade Controls Compliance to believe that the violator cannot be relied upon to comply with the AECA or ITAR in the future. Such an Order of Debarment prohibits the subject from participating directly or indirectly in the export of defense articles or defense services for which a license or approval is required by the ITAR.

The period for debarment will normally be three years from the date of Order. At the end of the debarment period, licensing privileges may be reinstated only at the request of the debarred person following the necessary Departmental review. Unless licensing privileges are reinstated, the person/entity will remain debarred.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (*See e.g.*, sections 120.1(c) and (d), 126.7, 127.1(c), and 127.11(a)). The Department of State will not consider applications for licenses or requests for approvals that involve any debarred person.

Pursuant to section 38 of the AECA and section 127.7(a) and (b)(2) of the ITAR, the following persons have been administratively debarred by the Assistant Secretary of State for Political-Military Affairs for a period of three years effective the date the Order is signed by Assistant Secretary of State for Political-Military Affairs:

(1) Kam-Tech Systems, Ltd. ("Kam-Tech"), an Israeli company located in Tel Aviv, Israel, and

(2) David Menashe ("Menashe"), owner and business manager of Kam-Tech.

Kam-Tech and Menashe pleaded guilty and, on June 18, 2003, were convicted of making false statements to the Bureau of Customs and Border Protection, U.S. Department of Homeland Security (formerly United States Customs Service (USCS)) in violation of 18 U.S.C. 1001. (U.S. District Court, Central District of California (Western Division), Docket # 03-CR-139-ALL.) Under the plea agreements entered in connection with the prosecution, Kam-Tech and Menashe agreed to a statement of facts that they caused a package to be shipped to the United States bearing an air waybill that falsely stated the contents consisted of "samples for evaluation" and were valued at \$245, when the defendants knew the package contained an AIM-9 Missile Seeker Section valued at \$19,600 and that this defense article was to be transhipped to

<sup>6</sup> See PCXE Rule 1.1(v) (definition of "Market Maker Authorized Trader").

<sup>7</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

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