rules/sro.shtml). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2004–06 and should be submitted on or before December 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3349 Filed 11–26–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50717; File No. SR–PCX–2004–80]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Arbitrator Classification, Challenges and Disclosure

November 22, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed Amendment No. 1 to the proposed rule change on October 1, 2004.[3] 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 PCX is proposing this Amendment No. 1, which replaces the original filing in its entirety, to amend the PCX Options and PCX Equities, Inc. (''PCXE'') arbitration rules relating to arbitrator classification, challenges, and disclosure. The text of the proposed rule change appears below; proposed deletions appear in [brackets], and proposed additions are *italicized*. Because the proposed changes to PCX Rule 12.8 through 12.11 are identical to the proposed changes to PCXE Rules 12.9 through 12.12, only the PCX rules appear below (the PCXE rules have not been included).

* * * * *

Rules of the Pacific Exchange, Inc.

Rule 12

Arbitration

* * * * *

Designation of Number of Arbitrators

Rule 12.8(a)–(b)—No change.

(c) An arbitrator will be deemed as *a non-public arbitrator, or* being from the securities industry, if he or she:

(i)[1.] is a person associated with an OTP Firm, OTP Holder, [or] broker/dealer, government securities broker, government securities dealer, municipal securities dealer or registered investment advisor, *is registered under the Commodity Exchange Act, a member of a commodities exchange or a registered futures association; or associated with a person or firm registered under the Commodity Exchange Act;* or

(ii)[2.] has been associated with any of the above within the past *five* [three (3)] years, or

(iii)[3.] is retired from, *or spent a substantial part of a career, engaging in any of the business activities listed* [any of the above] in subsection (i), or

(iv)[4.] is an attorney, accountant or other professional who devoted twenty (20) percent or more of his or her professional work effort to securities industry clients within the last two (2) years.

(d) *An arbitrator will be deemed as a public arbitrator if he or she:* [An arbitrator who is not from the securities industry shall be deemed a public arbitrator. A person will not be classified as a public arbitrator if he or she has a spouse or other member of the household who is a person associated with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer or investment advisor]

(i) is not engaged in the conduct or activities described in subsection (c)(i)–(iv);

(ii) was not engaged in the conduct or activities described in subsections (c)(i)–(iv) for a total of 20 years or more;

(iii) is not an investment adviser;

(iv) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years from any persons or entities listed in subsections (c)(i)–(iv);

(v) is not the spouse, parent, stepparent, child, or stepchild, or a member of the household of a person who is engaged in the conduct or activities described in subsections (c)(i)–(iv);

(vi) is not a person who receives financial support of more than 50 percent of his or her annual income from a person engaged in the conduct or activities described in subsections (c)(i)–(iv);

(vii) and is not a person who is claimed as a dependent for federal income tax purposes by a person engaged in the conduct or activities described in subsections (c)(i)–(iv).

(e)–(g)—No change.

Notice of Selection of Arbitrators

Rule 12.9. The Director of Arbitration shall inform the parties of the arbitrators' names and employment histories for the past ten (10) years, as well as information disclosed pursuant to Section 11 of this Rule at least eight (8) business days prior to the date fixed for the first hearing session. A party may make further inquiry of the Director of Arbitration concerning an arbitrator's background. In the event that any arbitrator after appointment and prior to the first hearing session, should resign, die, withdraw, be disqualified or otherwise be unable to perform as an arbitrator, the Director of Arbitration shall appoint a replacement arbitrator to fill any vacancy. *The Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The*

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] CFR 240.19b–4.

[3] *See* letter from Tania Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 30, 2004, and accompanying Form 19b–4 (''Amendment No. 1''). Amendment No. 1 replaced the original filing in its entirety.

interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative. The Director of Arbitration shall inform the parties of the name and employment history of the arbitrator for the past ten (10) years, as well as information disclosed pursuant to Section 11, as soon as possible. A party may make further inquiry of the Director of Arbitration concerning the background of the replacement arbitrator and, within the time remaining prior to the first hearing session, or the five (5) day period provided under Section 10, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided under Section 10.

Peremptory Challenge

Rule 12.10. In any arbitration proceeding, each party shall have the right to one peremptory challenge. In arbitrations where there are multiple Claimants, Respondents and/or Third Party Respondents, the Claimants shall have one peremptory challenge, the Respondents shall have one peremptory challenge and the Third Party Respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by awarding additional peremptory challenges. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identity of the persons named to the panel. There shall be unlimited challenges for cause.

In cases involving public customers, any close questions regarding arbitrator classification or challenges for cause brought by a customer will be resolved in favor of the customer.

Disclosures Required of Arbitrators

Rule 12.11(a). Each arbitrator shall be required to disclose to the Director of Arbitration any circumstances which might preclude such arbitrator from rendering any objective and impartial determination. Each arbitrator shall disclose:

(i)[(1)] any direct or indirect financial or personal interest in the outcome of the arbitration;

(ii)[(2)] any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or that might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators *must* [should] disclose any such relationships which they personally have with any party or its counsel, or with any individual whom they have been told will be a witness. They *must* [should] also disclose any such relationship involving members of their families or their current employers, partners, or business associates.

(b) persons who are requested to accept appointment as arbitrators *must* [should] make a reasonable effort to inform themselves of any interests or relationships described in subsection (a) above.

(c)–(d)—No change.

(e) *The Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.*

* * * * *

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 self-regulatory organization 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 self-regulatory organization 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 is proposing to amend the PCX and PCXE arbitration rules relating to arbitrator classification and disclosure. The Exchange proposes to amend PCX Rule 12 and PCXE Rule 12 to: (1) Modify the classification of public and non-public arbitrators; (2) provide specific standards for deciding challenges to arbitrators for cause; and (3) clarify that compliance with arbitrator disclosure requirements is mandatory. This rule proposal is based on the National Association of Securities Dealers, Inc.'s (''NASD'') rule proposal related to arbitrator classification, challenges and disclosure, which was recently approved by the Commission.[4]

Specifically, the Exchange proposes to amend the classification of a non-public arbitrator (*i.e.*, deemed as being from the securities industry) in PCX Rule 12.8(c) and PCXE Rule 12.9(c) to increase from three years to five years the period for transitioning from a public to non-public arbitrator. The Exchange also proposes to add the classification of those arbitrators that are registered under the Commodity Exchange Act, members of a commodities exchange or a registered futures association; or associated with a person or firm registered under the Commodity Exchange Act as a classification of a non-public arbitrator. Such classifications are similar to those found in the NASD's rules. The Exchange also proposes to clarify, under the same rules, that the term ''retired'' from the securities industry includes anyone who spent a substantial part of his or her career in the industry.

In addition, the Exchange proposes to amend the classification of a public arbitrator as set forth in PCX Rule 12.8(d) and PCXE Rule 12.9(d) in order to: prohibit anyone who has been associated with the industry for at least 20 years from ever becoming a public arbitrator, regardless of how many years ago the association ended; exclude attorneys, accountants, and other professionals whose firms have derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities stated in the classification of an industry arbitrator; and provide that investment advisers may not serve as public arbitrators and may only serve as non-

[4] *See* Securities Exchange Act Release No. 49573 (April 16, 2004), 69 FR 21871 (April 22, 2004) (File No. SR–NASD–2003–095). In November 2002, at the Commission's request, Professor Michael Perino issued a report assessing the adequacy of NASD's and New York Stock Exchange, Inc.'s (''NYSE'') arbitrator disclosure requirements and evaluating the impact of the recently adopted California Ethics Standards on the current conflict disclosure rules of the self-regulatory organizations (''SROs''). *See* Michael A. Perino, *Report to the Securities and Exchange Commission Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitrations*, November 4, 2002 (''Perino Report''). The Perino Report recommended several amendments to SRO arbitrator classification and disclosure rules that, according to the Perino Report, might ''provide additional assurance to investors that arbitrations are in fact neutral and fair.'' The Commission found the NASD's proposed rule changes implemented those recommendations, as well as several other related changes to the definition of public and non-public arbitrators that are consistent with the Perino Report recommendations. *See* Securities Exchange Act Release No. 49573 (April 16, 2004), 69 FR 21871 (April 22, 2004) (File No. SR–NASD–2003–095). Hence, the PCX proposes to make the same amendments to the PCX and PCXE arbitration rules.

public arbitrators if they otherwise qualify under PCX Rule 12.8(c) or PCXE Rule 12.9(c). The Exchange also proposes to amend the restriction for arbitrators with spouses or other members of the household associated with the securities industry as set forth in PCX Rule 12.8(d) and PCXE Rule 12.9(d). Such criteria would be expanded in PCX Rule 12.8(d)(v) and PCXE Rule 12.9(d)(v) to now exclude from the definition of public arbitrator (in addition to spouses and any member of the arbitrator's household, who are currently excluded), an arbitrator's parents, stepparents, children, and stepchildren.

Moreover, the Exchange proposes to amend PCX Rules 12.9 and 12.11, and PCXE Rules 12.10 and 12.12, to provide that a challenge for cause will be granted where it is reasonable to infer an absence of impartiality, the presence of bias, or the existence of some interest on the part of the arbitrator in the outcome of the arbitration as it affects one of the parties. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative. In addition, PCX Rule 12.10 and PCXE Rule 12.11 would also be amended to add a new paragraph, which would provide that close questions regarding arbitrator classification or challenges for cause brought by a public customer would be resolved in favor of the customer.

Finally, the Exchange proposes to amend PCX Rule 12.11 and PCXE Rule 12.12 to clarify that arbitrators must disclose the required information and must make reasonable efforts to inform themselves of potential conflicts and update their disclosures as necessary. The Exchange believes that these amendments to the PCX and PCXE arbitration rules are necessary to provide consistency with respect to arbitration rules and procedures to the public and ensure that arbitrations are fair and neutral.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest.

[5] 15 U.S.C. 78f(b).

[6] 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

Written comments on the proposed rule change were neither solicited nor received.

III. 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–80. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–SR–PCX–2004–80 and should be submitted on or before December 20, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, 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[7] and, in particular, the requirements of Section 6(b)[8] of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which, among other things, requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

At the Commission's request, Professor Michael Perino issued a report assessing the adequacy of NASD's and New York Stock Exchange, Inc.'s (''NYSE'') arbitrator disclosure requirements and evaluating the impact of the recently adopted California Ethics Standards[10] on the current conflict disclosure rules of the NASD and the NYSE.[11] The Perino Report recommended several amendments to the NASD's and NYSE's arbitrator classification and disclosure rules that, according to the report, might ''provide additional assurance to investors that arbitrations are in fact neutral and fair.'' The Commission believes that the PCX's proposed rule change implements those same recommendations, as well as several other related changes to the definition of public and non-public arbitrators that are consistent with the recommendations made in the Perino Report with regard to the arbitration rules of the NASD and NYSE.

Specifically, the Commission finds that PCX's proposal to amend the definition of non-public arbitrator in PCX Rule 12.8(c) and PCXE Rule 12.9(c) is consistent with the Act. The

[7] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* California Rules of Court, Division VI of the Appendix, entitled, ''Ethics Standards for Neutral Arbitrators in Contractual Arbitration.''

[11] *See* Perino Report, supra note 4.

Exchange's proposal, among other things, to exclude from the definition of public arbitrator attorneys, accountants, and other professionals whose firms have derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities defined as non-public is reasonably designed to reduce a perception of bias by Exchange arbitration panel members. The Exchange's proposal to expand the definition of ''immediate family member'' in PCX Rule 12.8(d) and PCXE Rule 12.9(d) to include parents, stepparents, children, or stepchildren, as well as any member of the arbitrator's household is also consistent with the Act.

The Commission believes that the Exchange's proposal to exclude from the definition of public arbitrator attorneys, accountants, and other professionals whose firms derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities defined in the definition of non-public arbitrator is reasonably designed to reduce a perception of bias by Exchange arbitration panel members. The Perino Report recommended that the NASD and NYSE consider an expansion of the definition of ''immediate family member'' to include parents and children, even if the parent or child do not share the same home or receive substantial support from a non-public arbitrator.[12] The PCX has considered this same issue and has determined to expand the term as was recommended in the Perino Report with regard to the arbitration rules of the NASD and the NYSE. The Commission believes it is reasonable for the PCX to further expand the definition of non-public arbitrator by including stepparents and step children as well as parents, children, and any household member in the definition of immediate family member. The Perino Report noted, generally, that ''no classification rule could ever precisely define public and non-public arbitrators; there will always be classification questions at the margins about which reasonable people will differ.'' [13] Thus, the Commission believes that the PCX's amendments to the definition of public arbitrator, including the 10 percent threshold and definition of ''immediate family member'' are consistent with the Act.

The PCX has represented that the proposed amendments to PCX Rule 12 and PCXE Rule 12 would substantially conform its arbitration rules relating to arbitrator classification, challenges, and disclosure to the existing arbitration rules of the NASD, which the Commission has already approved. As such, the Commission believes that the proposed amendments to PCX Rule 12 and PCXE Rule 12 are necessary and appropriate to provide consistency with respect to arbitration rules and procedures to the public and ensure that arbitrations are fair and neutral. The Commission believes that granting accelerated approval of the proposed rule changes would facilitate the accomplishment of these objectives. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[14] for approving the proposed rule change prior to the thirtieth day of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change (SR–PCX–2004–80) as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3354 Filed 11–26–04; 8:45 am]

BILLING CODE 8010–01–P

[12] *See Id.*

[13] *See Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] *Id.*

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4909]

Culturally Significant Objects Imported for Exhibition Determinations: ''Retratos: 2,000 Years of Latin American Portraits''

ACTION: Notice; correction.

SUMMARY: On November 2, 2004, Notice was published in the **Federal Register** (volume 69, number 211, 63566) pertaining to the exhibition ''Retratos: 2,000 Years of Latin American Portraits.'' The referenced Notice is hereby corrected to include the San Diego Museum of Art, San Diego, California, as an exhibition venue from on or about April 16, 2005 to on or about June 12, 2005.

FOR FURTHER INFORMATION CONTACT: For further information contact Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, Department of State, (telephone: 202/453–8050). The address is: Department of State, SA–44, and 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: November 17, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–26293 Filed 11–26–04; 8:45 am]

BILLING CODE 4710–08–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1556).

TIME AND DATE: 9 a.m. (c.s.t.), November 30, 2004, Lucille N. Galin Municipal Auditorium, 204 Second Avenue, NE., Cullman, Alabama.

STATUS: Open.

Agenda

Approval of minutes of meeting held on October 27, 2004.

New Business

A—Budget and Financing

A1. Retention of Net Power Proceeds and Nonpower Proceeds and Payments to the United States Treasury.

A2. Approval of tax-equivalent payments for Fiscal Year 2004 and estimated payments for Fiscal Year 2005.

B—Purchase Awards

B1. Contracts with Siemens Information and Communications Networks, Inc.; SBC Global Services, Inc.; Northrop Grumman Information Technology; and Henkels & McCoy, Inc., for telecommunications network equipment.

B2. Contract with CDW-Government, Inc., to furnish a Microsoft Enterprise Agreement that provides standard software, including upgrades and support, for both personal computers and enterprise servers.

B3. Supplement to contract with Cigna Healthcare of Tennessee for a health maintenance organization medical plan option.

B4. Contract with Connecticut General Life Insurance Company for dental benefit services.

C—Energy

C1. Delegation of authority to the Executive Vice President, Fossil Power Group, to enter into a contract with Burlington Northern & Santa Fe Railway for transportation of coal from Wyoming to Memphis, Tennessee.

C2. Delegation of authority to the Executive Vice President, Fossil Power Group, to enter into two term coal supply contracts with Arch Coal Sales