

at a price higher than the lowest price at which any block was acquired in a previous transaction on July 1, provided that the person responsible for the entry of such order to purchase the security had knowledge of the block position.<sup>8</sup>

The Exchange also proposes to replace the term "trading account" in paragraph (a) of NYSE Rule 97 with "proprietary account" so as to clarify that NYSE Rule 97's restrictions may apply regardless of where the long facilitation position is placed, e.g., a facilitation account or a trading account.

## (2) Statutory Basis

The Exchange believes that the basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act<sup>9</sup> that an exchange have rules that are 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.

### 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 neither solicited nor received written comments on 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, 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-2001-24 and should be submitted by August 9, 2002.

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

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46190; File No. SR-PCX-2002-33]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., To Revise the Process for Designating Arbitrators for Member-to-Member Disputes

July 11, 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 May 30, 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

The PCX proposes to amend PCX Rule 12.8(e) to revise the process for designating arbitrators for member-to-member disputes. Text in brackets indicates material to be deleted, and text in italics indicates material to be added.

\* \* \* \* \*

### Pacific Exchange, Inc., Rules of The Board of Governors

#### Rule 12

#### Arbitration

#### Designation of [Number of] Arbitrators

Rule 12.8(a)-(d)—No change.  
(e) Member Controversies. [(1)] In all arbitration matters not involving public customers[,] *and where the matter in controversy involves an amount that is \$30,000 or less (exclusive of interest and costs), the Director of Arbitration [shall] will appoint an arbitration panel composed of one securities industry arbitrator unless the parties request and mutually agree to the appointment of a public arbitrator* [assign the matter to a panel consisting of members of the Arbitration Committee]. *If the amount involved in the controversy exceeds \$30,000 (exclusive of interest and costs), the Director of Arbitration will appoint an arbitration panel composed of three or five arbitrators from the securities industry unless the parties request and mutually agree to a different panel composition.* [Such] [m]Members of the arbitration panel *will* [shall] not be affiliated with any of the parties to the controversy or have any interest in the matter to be heard. [For controversies involving an amount of \$10,000 or less, the panel shall consist of one (1) member. For all other controversies, the panel shall consist of three (3) members.]

Commentary:

.01—No change.

(f)—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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

<sup>8</sup> Under the proposed language to NYSE Rule 97, "a member, allied member, or an employee of a member organization responsible for entering proprietary orders shall be presumed to have knowledge of a particular block position unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about block positions by those responsible for entering such proprietary orders."

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

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 17 CFR 240.19b-4.

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 current PCX rules divide arbitration claims between matters involving public customers ("Public Controversies") and matters not involving public customers ("Member Controversies"). Public Controversies are addressed in PCX Rules 12.8(a) and (b), which provide for one arbitrator where the matter in controversy does not exceed \$30,000 and for three to five arbitrators where the matter exceeds \$30,000. Arbitrators for Public Controversies are selected by the Director of Arbitration who appoints a panel from the existing pool of arbitrators of the Exchange.<sup>3</sup> Member Controversies are covered by Rule 12.8(e), which provides for a panel consisting of one Arbitration Committee member for controversies involving an amount of \$10,000 or less, and a panel of three Arbitration Committee members for all other controversies.

The proposed rule would provide a new selection process for Member Controversies. Specifically, the proposed rule would eliminate the current reference to the Arbitration Committee in Rule 12.8(e) and provide for the Director of Arbitration to appoint a panel from the same existing pool of arbitrators that the Exchange currently uses for Public Controversies. Also, the proposed rule would state that if the matter in controversy involves an amount that is \$30,000 or less (exclusive of interest and costs), the Director of Arbitration would appoint an arbitration panel composed of one securities industry arbitrator, unless the parties request and mutually agree to the appointment of a public arbitrator. However, if the amount involved in the controversy exceeds \$30,000 (exclusive of interest and costs), the Director of Arbitration would appoint an arbitration panel composed of three or five arbitrators from the securities industry unless the parties request and mutually agree to a different panel composition.

A "securities industry arbitrator" is currently defined as a person: associated with a member, or broker/dealer, government securities broker, government securities dealer, municipal securities dealer or registered investment advisor; or who has been associated with any of these entities within the past three years; or who is retired from any of these entities; or who is an attorney, accountant or other professional who devoted twenty percent or more professional work effort to securities industry clients within the last two years.<sup>4</sup> An arbitrator who is not from the securities industry is deemed a public arbitrator.<sup>5</sup> Public arbitrators may not have 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.<sup>6</sup> Members of an arbitration panel will not be affiliated with any of the parties to the controversy or have any interest in the matter to be heard.<sup>7</sup>

PCX believes that the proposed rule change would simplify the PCX arbitrator selection process for Member Controversies by coordinating the rule with existing rules on Public Controversies. The proposed rule would provide this uniformity by raising the amount in controversy from \$10,000 to \$30,000 as the threshold in determining whether the controversy would be heard by at least three arbitrators. This proposed threshold would be consistent with PCX Rules for Public Controversies. The proposed rule would also provide for a consistent source of arbitrators by using the same arbitrator list for the selection of arbitrators for both Public and Member Controversies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in

securities, 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 the 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*

No written comments were solicited or 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

(A) 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. 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

<sup>4</sup> See PCX Rule 12.8(c).

<sup>5</sup> See PCX Rule 12.8(d).

<sup>6</sup> See PCX Rule 12.8(d).

<sup>7</sup> See PCX Rule 12.8(e).

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

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

<sup>3</sup> The Exchange's Director of Arbitration maintains a list of arbitrators who are qualified approved applicants.

submissions should refer to File No. SR-PCX-2002-33 and should be submitted by August 9, 2002.

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

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46193; File No. SR-PCX-2002-35]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Housekeeping and Technical Amendments to PCXE Rules in Order to Incorporate Those Rules Into the New PCXE Rules Governing the Archipelago Exchange Facility

July 12, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 14, 2002, 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 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 Exchange, through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE"), proposes to make various housekeeping and technical changes to certain previously approved PCXE rules in order to incorporate those rules into the new PCXE rules governing the Archipelago Exchange ("ArcaEx") facility. The text of the proposed rule change is available at the Exchange 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 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 parts of such statements.

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

##### 1. Purpose

On October 25, 2001, the Commission approved a proposed rule change by the PCX to establish ArcaEx, a new electronic trading facility of PCXE.<sup>3</sup> ArcaEx is a fully electronic securities trading facility for use by Equity Trading Permit ("ETP") Holders and their customers. PCX and PCXE are responsible for all regulatory functions related to the facility, and Archipelago Exchange, L.L.C., a subsidiary of Archipelago Holdings, L.L.C., is responsible for the business of the facility to the extent that these activities are not inconsistent with the regulatory and oversight functions of PCX and PCXE. ArcaEx commenced operations on March 22, 2002, replacing the PCXE's traditional trading floor facilities.

With this filing, PCX proposes to make various housekeeping and technical changes to certain previously approved PCXE rules in order to incorporate those rules into the new PCXE rules governing ArcaEx. A summary of the proposed changes to the text of the PCXE rules are explained below.

##### a. Audit Committee Requirements for Listed Companies

The Exchange proposes to amend PCXE Rule 5.3(b) by adding language regarding audit committee requirements for listed domestic issuers. The rule change requires listed companies to adopt formal written charters and establishes composition requirements for audit committees including expertise and independence criteria for committee members. The SEC previously approved the proposed rule text on February 7, 2001.<sup>4</sup> The Exchange is proposing to incorporate the rule change into the new set of rules governing the ArcaEx facility.

<sup>3</sup> See Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (Order approving File No. SR-PCX-00-25) ("ArcaEx Approval Order").

<sup>4</sup> See Securities Exchange Act Release No. 43941 (February 7, 2001), 66 FR 10545 (February 15, 2001) (Order approving File No. SR-PCX-00-40).

##### b. Supervisory Procedures

The Exchange proposes to add PCXE Rule 6.18 relating to Supervisory Procedures. Under this proposed rule, each ETP Holder must establish and maintain a supervisory system to supervise the activities of its associated persons and the operations of its business. The SEC published the original rule filing on January 8, 2001.<sup>5</sup> The Exchange is proposing to incorporate the rule change into the new set of rules governing the ArcaEx facility. In addition, the Exchange proposes to make technical changes to the rule text as originally approved by the Commission by deleting references to the terms "Equity ASAP Holder" and "ETP Firm." These membership categories are no longer applicable under ArcaEx's market structure.<sup>6</sup>

##### c. Trust Issued Receipts

On April 16, 2001, the SEC approved an Exchange rule proposal to adopt generic listing requirements for Trust Issued Receipts ("TIRs").<sup>7</sup> The Exchange is proposing to incorporate the rule change into the new set of rules governing the ArcaEx facility. The proposed listing and maintenance standards for securities on TIRs are set forth respectively in Commentary .01 to PCXE Rule 8.200(a), and in Rule 8.200(d). Also, minor conforming word changes have been made to reflect the simplified membership structure under ArcaEx.<sup>8</sup>

##### d. Electronic Mail Addresses

The Exchange proposes to incorporate into the new PCXE rules for ArcaEx a provision requiring all ETP Holders to establish and maintain an Internet electronic mail account with the PCXE. The SEC published the original rule filing on January 29, 2001.<sup>9</sup> The Exchange proposes to renumber former PCXE Rule 2.26 as new PCXE Rule 2.23, and is also modifying the rule text by eliminating references to "Equity ASAP Holder" and "ETP Firm" because these membership categories are no longer applicable under ArcaEx's market structure.<sup>10</sup>

<sup>5</sup> See Securities Exchange Act Release No. 43817 (January 8, 2001), 66 FR 3636 (January 16, 2001) (SR-PCX-00-43).

<sup>6</sup> See Securities Exchange Act Release No. 43608 (November 21, 2000), 65 FR 78822 (December 15, 2000) (SR-PCX-00-25) ("ArcaEx Proposing Release").

<sup>7</sup> See Securities Exchange Act Release No. 44182 (April 16, 2001), 66 FR 21798 (May 1, 2001) (Order approving File No. SR-PCX-2001-01).

<sup>8</sup> See ArcaEx Proposing Release, *supra* note 6.

<sup>9</sup> See Securities Exchange Act Release No. 43898 (January 29, 2001), 66 FR 8832 (February 2, 2001) (SR-PCX-01-02).

<sup>10</sup> See ArcaEx Proposing Release, *supra* note 6.

<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.