

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.

#### e. Exchange-Traded Funds ("ETFs")

On July 12, 2001, the SEC approved an Exchange rule proposal to adopt generic listing requirements for Investment Company Units ("ICUs") and Portfolio Depositary Receipts ("PDRs") (collectively known as ETFs).<sup>11</sup> The rules allow PCXE to begin trading qualifying products pursuant to Rule 19b-4(e) under the Act without submitting a formal rule filing to the SEC. The Exchange's current rules for the initial and continued listing of ICUs and PDRs are set forth in PCXE Rules 5.2(j)(3)<sup>12</sup> and 8.100, respectively. The Exchange proposes to incorporate the rule changes using the same numbering sequence into the new set of rules governing the ArcaEx facility. Also, minor conforming changes to the text have been made to reflect the simplified membership structure of ArcaEx.<sup>13</sup>

#### f. Minor Rule Plan Amendments

On July 27, 2001, the SEC approved an Exchange rule proposal increasing the fines for violations of certain rules under the PCXE's Minor Rule Plan.<sup>14</sup> The Exchange is proposing to incorporate the increased Minor Rule Plan fines into the new set of rules governing the ArcaEx facility. However, the Exchange notes that the Minor Rule Plan fines for violations relating to floor trading and specialists (e.g., admission to and conduct on the trading floor) have not been included in the proposed rules because they are not applicable to the ArcaEx trading environment.

#### g. Conversion to Decimals

The Exchange proposes to incorporate into the new PCXE rules for ArcaEx several technical revisions to its equities trading rules in order to eliminate references to fractional pricing. The SEC published the rule filing on November 19, 2001.<sup>15</sup> Minor word changes and revisions in the numbering of the rules have been made to conform the proposed rules to the new PCXE rules for ArcaEx. In addition, the changes made to former PCXE Rule 7.12 (Firm Quotations) and Rule 7.70 (Pacific Computerized Order Access System ("P/COAST")) have been omitted from

inclusion in the new PCXE rules. PCXE Rule 7.12 has been replaced in its entirety with new PCXE Rule 7.17. Also, with the elimination of trading floor and the introduction of the ArcaEx trading system, Rule 7.70 relating to P/COAST becomes obsolete.

#### h. Intermarket Trading System ("ITS")

The Exchange proposes to amend PCXE Rule 7.55(b)(2)(F), formerly Rule 7.66(b)(2)(F), to conform to the seventeenth amendment to the restated ITS Plan.<sup>16</sup> Presently, Rule 7.55(b)(2)(F) provides that the sender of an ITS commitment may designate a time period during which a commitment will be irrevocable following acceptance by the ITS system. The ITS Plan provides for three irrevocable time-period options consisting of 30-seconds, one minute, and two minutes. Accordingly, the Exchange is proposing to replace the current language in subsection (b)(2)(F), which states that there are "two" irrevocable time-period options, with the word "three" thereby making the rule text consistent with the ITS Plan. The SEC published the original rule filing on March 19, 2002.<sup>17</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>18</sup>

#### i. Trading Hours for ICUs and PDRs

Prior to the implementation of ArcaEx, the Exchange's trading hours for series of ICUs and PDRs were between 6:30 a.m. and 1:30 p.m. (PT), as set forth in PCXE Rule 5.2(j)(3), Commentary .01(f) and Rule 8.100, Commentary .01(f), respectively. With this filing, the Exchange is proposing to change its trading hours for ICUs and PDRs to conform to the trading sessions of ArcaEx.

ArcaEx has three trading sessions each day the PCXE is open for business: The Opening Session (5 a.m. to 6:30 a.m. (PT)), the Core Trading Session (6:30 a.m. to 1 p.m. (PT)) and the Late Trading Session (1 p.m. to 5 p.m.

(PT)).<sup>19</sup> Because ArcaEx operates the Opening and Late Trading Sessions outside of the traditional trading hours, the PCXE requires ETP Holders to provide certain customer disclosures.<sup>20</sup> In particular, no ETP Holder can accept an order from a non-ETP Holder for execution in the Opening or Late Trading Session without disclosing to such non-ETP Holder that:

(1) Except for market orders eligible for execution during the Market Order Auction, Limited Price Orders are the only orders that are eligible for execution during the Opening and Late Trading Sessions;

(2) An order must be designated specifically for trading in the Opening and/or Late Trading Session to be eligible for trading in the Opening and/or Late Trading Session; and

(3) Extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk.

These disclosures are designed to ensure that participants in the Opening or Late Trading Sessions understand the potential risks of that participation. Currently, several electronic trading systems provide investors the opportunity to trade these securities outside the regular trading hours. The PCX believes that the proposed rule amendment will enhance competition by providing investors with an alternative forum through which to trade these products. In addition, the Exchange believes that its proposal to expand PCXE's trading hours for ICUs and PDRs is consistent with the business hours for operating ArcaEx.<sup>21</sup>

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>22</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>23</sup> in particular, in that 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, in general, to protect investors and the public interest.

<sup>11</sup> See Securities Exchange Act Release No. 44551 (July 12, 2001) 66 FR 37716 (July 19, 2001) (Order approving File No. SR-PCX-2001-14).

<sup>12</sup> The Exchange's definition of a "Unit" and the listing maintenance requirements for ICUs are contained in existing PCXE Rules 5.1(b)(15) and 5.5(g)(1), respectively.

<sup>13</sup> See ArcaEx Proposing Release, *supra* note 6.

<sup>14</sup> See Securities Exchange Act Release No. 44611 (July 27, 2001) 66 FR 40771 (August 3, 2001) (Order approving File No. SR-PCX-2001-19).

<sup>15</sup> See Securities Exchange Act Release No. 45077 (November 19, 2001), 66 FR 59280 (November 27, 2001) (SR-PCX-2001-39).

<sup>16</sup> See Securities Exchange Act Release No. 44903 (October 3, 2001), 66 FR 52159 (October 12, 2001) (Order approving Seventeenth Amendment to the ITS Plan).

<sup>17</sup> See Securities Exchange Act Release No. 45595 (March 19, 2002), 67 FR 14759 (March 27, 2002) (SR-PCX-2002-07).

<sup>18</sup> See ArcaEx Proposing Release, *supra* note 6.

<sup>19</sup> See PCXE Rule 7.34(a) (description of the ArcaEx trading sessions).

<sup>20</sup> See PCXE Rule 7.34(e) (description of the required customer disclosures).

<sup>21</sup> See ArcaEx Approval Order, *supra* note 3.

<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> 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 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>24</sup> and subparagraph (f)(3) of Rule 19b-4 thereunder<sup>25</sup> because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such 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, N.W., Washington, D.C. 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 Section. 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-2002-35 and should be submitted by August 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

**SMALL BUSINESS ADMINISTRATION**

**Data Collection Available for Public Comments and Recommendations**

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Submit comments on or before September 17, 2002.

**ADDRESSES:** Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW, Suite 6300, Washington DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Sandra Johnston, Program Analyst, (202) 205-7528 or Curtis B. Rich, Management Analyst, (202) 205-7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* Business Loan Reconsideration Request.

*Form No:* N/A.

*Description of Respondents:* Individuals Seeking a Reconsideration of a Declined Business Loan.

*Annual Responses:* 1,800.

*Annual Burden:* 3,600.

**SUPPLEMENTARY INFORMATION:**

*Title:* Reporting and Recordkeeping for Lenders

*Form No's:* N/A.

*Description of Respondents:* Small Business Lending Companies.

*Annual Responses:* 2,400.

*Annual Burden:* 2,400.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 02-18236 Filed 7-18-02; 8:45 am]

**BILLING CODE 8025-01-P**

**DEPARTMENT OF STATE**

**[Public Notice 4067]**

**Office of International Energy and Commodities Policy Finding of No Significant Impact: Reef International, L.L.C.**

**AGENCY:** Department of State.

**ACTION:** Notice of a finding of no significant impact with regard to an application to construct, operate, and maintain a pipeline and related facilities to transport liquefied petroleum gas, including propane and butane, across the U.S.-Mexico border at Maverick County, Texas.

**SUMMARY:** The Department of State has conducted an environmental assessment of the proposed construction by Reef International, L.L.C. of a pipeline and related facilities for the transport of liquefied petroleum gas, including propane and butane, crossing the international boundary at Maverick County, Texas. This information may be viewed upon request in the Office of International Energy and Commodities Policy at the Department of State.

Based on this information, the Department of State has concluded that issuance of a Presidential Permit authorizing construction of the pipeline will not have a significant effect on the existing vegetation and wildlife, water resources, land use, air quality, and human population within the United States. In reaching this conclusion, the Department considered several alternatives, including a no-action alternative.

In accordance with the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq., Council on Environmental Quality Regulations, 40 CFR 1501.4 and 1508.13, and Department of State Regulations, 22 CFR 161.8(C), an environmental impact statement will not be prepared.

**FOR FURTHER INFORMATION ON THE**

**PIPELINE PERMIT APPLICATION CONTACT:**

Pedro G. Erviti or Matthew T. McManus, Office of International Energy and Commodities Policy, Department of State, Washington, DC 20520; or by telephone at (202) 647-2857 or (202) 647-3423; or by fax at (202) 647-4037.

**SUPPLEMENTARY INFORMATION:** Reef is a limited liability corporation organized under the laws of the State of Texas with its principal office located in Corpus Christi, Texas. The proposed pipeline would be adjacent to a proposed natural gas pipeline for which Reef has received a Presidential permit from the Federal Energy Regulatory Commission. On January 31, 2002, the

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>25</sup> 17 CFR 240.19b-4(f)(3).

<sup>26</sup> 17 CFR 200.30-3(a)(12).