Number SR–PCX–2004–62 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–2004–62. 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, 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–PCX–2004–62 and should be submitted on or before August 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–18123 Filed 8–6–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50131; File No. SR–PCX–2004–29]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 to Add a Provision in the Minor Rule Plan and Recommended Fine Schedule for Failure to Maintain Continuous, Two-Sided Q Orders in Those Securities in Which the Market Maker is Registered to Trade

July 30, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), 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. On July 2, 2004, the PCX amended the proposed rule change.[3] On July 26, 2004, the PCX again amended the proposed rule change.[4] 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 the PCXE Minor Rule Plan ("MRP") and Recommended Fine Schedule ("RFS") to add a provision in the MRP and RFS for failure to maintain continuous, two-sided Q Orders in those securities in which a PCXE market maker is registered to trade. The text of the proposed rule change is below. Proposed new language is in italics.

Rule 10—Disciplinary Proceedings, Other Hearings, and Appeals

* * * * *

Minor Rule Plan

Rule 10.12(a)–(f)—No change.

(g) Minor Rule Plan: Minor Trading Rule Violations.

(1)–(2)—No change.

(3) Failure to maintain continuous, two-sided Q Orders in those securities in which the Market Maker is registered to trade (Rule 7.23(a)(1)).

* * * * *

[1] Fines for multiple violations of Minor Trading Rules are calculated on a running two-year basis, except that violations denoted with an asterisk are calculated on a running one-year basis.

* * * * *

(i) Minor Rule Plan: Recommended Fine Schedule.

	1st violation	2nd violation	3rd violation
(1)–(2)—No change..			
(3) Failure to maintain continuous two-sided Q Orders in those securities in which the Market Maker is registered to trade. (Rule 7.23(a)(1)) [2]	$100.00	$250.00	$500.00

[2] This schedule is based on the number of violations for a particular security and the number of violations shall be calculated on a monthly basis and is intended to apply to inadvertent violations of Rule 7.23(a)(1). In cases of deliberate or other aggravated circumstances, other disciplinary action may be sought.

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 its proposal and discussed any comments it received regarding the proposal. 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 is proposing to amend the PCXE MRP and RFS to add a

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Tania J.C. Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 1, 2004 ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original filing.

[4] *See* letter from Tania J.C. Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 23, 2004 ("Amendment No. 2"). Amendment No. 2 replaced footnote #2 (on page 3 of Amendment No. 1) and footnote #4 (on page 8 of Amendment No. 1).

provision in the MRP and RFS for failure to maintain continuous, two-sided Q Orders in those securities in which a PCXE market maker is registered to trade. PCXE Rule 7.23(a)(1) states that a market maker must maintain continuous, two-sided Q Orders in those securities in which it is registered to trade as a component of the market maker's obligations. The proposed fines are $100 for a first violation, $250 for a second violation, and $500 for a third violation for failure to maintain continuous, two-sided Q Orders in those securities in which the market maker is registered to trade. The fine schedule and the number of violations are based on each failure to quote and for each security, depending on the number of securities involved. For example, if a market maker failed to maintain continuous, two-sided Q Orders for ''IBM'' on Day 1, then failed to maintain continuous, two-sided Q Orders in ''Microsoft'' and ''Yahoo'' on Day 2, such violations will be calculated as violations 1, 2, and 3, respectively, assuming that Day 1 and 2 are within the same month. Violations would be calculated on a monthly basis [5] and the proposed MRP is intended to apply to inadvertent violations of PCXE Rule 7.23(a)(1).[6]

The Exchange believes that the proposed rule change would strengthen the ability of the Exchange to carry out its oversight responsibilities as a self-regulatory organization. The proposed rule change should also aid the Exchange in carrying out its surveillance and enforcement functions. The Exchange does not minimize the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Exchange's MRP. The Exchange relies on its MRP as a tool to address enumerated violations via the MRP process that provides the Exchange with greater flexibility to address violations that may not require formal disciplinary proceedings. Under the proposed rule change, the Enforcement Department would continue to exercise its discretion under PCXE Rule 10.13(f) and take cases out of the MRP to pursue them as formal disciplinary matters if the facts or circumstances warrant such action.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange also believes the proposal is consistent with Section 6(b)(6),[8] which requires that members and persons associated with members be appropriately disciplined for violations of Exchange rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would 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. 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 PCX consents, the Commission will:

(A) By order approve the 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. 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–2004–29 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–2004–29. 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 the 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–PCX–2004–29 and should be submitted on or before August 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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[5] Monthly basis means a strict month-to-month calculation. The calculation would restart at the beginning of each month. For example, if a market maker incurred a first violation on July 15th and incurred another violation on August 15th, the August 15th violation would be calculated as a first violation since it occurred during a different month.

[6] An inadvertent violation is when a market maker inadvertently fails to put in quotes as opposed to purposely backing away from maintaining a fair and orderly market. An example of an inadvertent violation is when a market maker puts in a maximum tradable size for a given security and the entire size is traded, which would leave the security without a quote. An example of a deliberate failure is when a market maker pulls a quote in reaction to a drop in stock price. Such an action would be evident from the surveillance report review process and would be taken out of the MRP and pursued as a formal disciplinary proceeding.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(6).

[9] 17 CFR 200.30–3(a)(12).