

*OATS Reporting Technical Specifications* within 45 days of Commission approval. In addition, NASD stated that it would ensure that adequate time for testing is incorporated into the implementation schedule and will make the testing environment available at least six weeks prior to the implementation date of the proposed rule change.

The Commission believes that the proposed changes to the implementation schedule for the proposed OATS Rules are reasonable as the additional time provided should allow member firms ample opportunity to develop and test their systems to ensure compliance with the requirements of the proposed rules.

In Amendment No. 3, NASD also proposes to make technical amendments to NASD Rule 6957(c) to clarify that the OATS order information required under NASD Rule 6954(b)(4) and (5) and the OATS order transmittal requirements under NASD Rule 6954(c)(1) apply to manual orders. Currently, NASD Rule 6957 provides that for manual orders, firms shall not be required to record this information. However, the Commission notes that in Amendment No. 2, NASD stated that the proposed rule change was to apply to both electronic and manual orders. As such, the Commission believes that NASD clearly intended to have the inter-departmental order transmittal requirements apply to manual orders. Similarly, the Commission believes that it was clear that NASD intended that department identification information concerning where a manual order was originated also was intended to be included. Therefore, the Commission finds that it is consistent with the Act in general, and with Section 15A(b)(6) of the Act in particular,<sup>67</sup> to approve Amendment No. 3 to the proposed rule change, as reflected in Amendment No. 2, on an accelerated basis.

## VII. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether the amendment 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](mailto:rule-comments@sec.gov). Please include File

Number SR-NASD-00-23 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-00-23. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

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 the File Number SR-NASD-00-23 and should be submitted on or before October 25, 2005.

## VIII. Conclusion

The Commission believes that the proposed rule change, as reflected in Amendments No. 2 and 3, is appropriate and consistent with the requirements of the Act applicable to a national securities association, and in particular, with the requirements of Section 15A(b)(6) of the Act<sup>68</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>69</sup> that Amendment No. 2 to the proposed rule change (SR-NASD-00-23) is hereby approved, and Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>70</sup>

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52513; File No. SR-PCX-2005-106]

### **Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Rescinding Pilot Rules Relating to the Waiver of the California Ethics Standards for Neutral Arbitrators in Contractual Arbitration and Section 1281.92 of the California Code of Civil Procedure**

September 27, 2005.

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 September 20, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by PCX. PCX has designated this proposal as "non-controversial" pursuant to Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective immediately upon filing with the Commission. 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**

PCX is proposing to amend the PCX Options and PCX Equities, Inc. ("PCXE") arbitration rules to rescind the pilot rules (the "Pilot Rules") relating to the waiver of the California Ethics Standards for Neutral Arbitrators in Contractual Arbitration (the "California Standards") and the waiver of California Code of Civil Procedure Section 1281.92 ("CCCP Claims"). The text of the proposed rule change is available on the PCX's Web site (<http://www.pacificex.com>), at the PCX's Office

<sup>70</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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>67</sup> 15 U.S.C. 78o-3(b)(6).

<sup>68</sup> 15 U.S.C. 78o-3(b)(6).

<sup>69</sup> 15 U.S.C. 78s(b)(2).

of the Secretary, and at the Commission's Public Reference Room.

## 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 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 purpose of the proposed rule change is to rescind the Pilot Rules relating to the waiver of the California Standards and the CCCP Claims.

Effective July 1, 2002, the California Judicial Council adopted the California Standards,<sup>5</sup> which contain extensive disclosure and disqualification requirements for arbitrators. The California Standards imposed disclosure and disqualification requirements on arbitrators that conflict with the disclosure requirements of the PCX and PCXE. Because PCX and PCXE could not administer its arbitration program in accordance with its own rules and comply with the new California Standards at the same time, the PCX initially suspended the appointment of arbitrators.

In November 2002, PCX implemented the Pilot Rules providing that if parties to an arbitration who are customers (or, in certain circumstances, associated persons) waived application of the California Standards to their arbitration proceeding, then the firm would be required to waive the application of the California Standards. Under such a waiver, the arbitration proceeds under existing PCX and PCXE rules, which already contains extensive disclosure requirements and provisions for challenging arbitrators with potential conflicts of interest. PCX will decline jurisdiction and dismiss and refund fees paid to PCX and PCXE by the parties for any arbitration claims in which any of the parties to arbitration fails to sign the applicable waivers.

On March 1, 2005, the United States Court of Appeals for the Ninth Circuit

issued its decision in *Credit Suisse First Boston Corp. v. Grunwald*.<sup>6</sup> The Ninth Circuit held that the Exchange Act preempts application of the California Standards. On May 23, 2005, the Supreme Court of California also held that the Act preempts application of the California Standards.<sup>7</sup>

PCX has determined that the Pilot Rules should be rescinded prior to its expiration as they are no longer necessary. Specifically with the recent decisions in *Grunwald* and *Jevne*, both the Ninth Circuit and the California Supreme Court have found that the Act preempts the application of the California Standards. Consequently, the PCX believes that it can once again appoint arbitrators without requiring a waiver of the California Standards.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade by ensuring that Options Trading Permits Holders, Options Trading Permits Firms, Exchange Trading Permits Holders and the public have a fair and impartial forum for the resolution of their disputes.

### 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder<sup>11</sup> because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant

burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. As required under Rule 19b-4(f)(6)(iii),<sup>12</sup> the PCX provided the Commission with written notice of PCX's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the filing date of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative for 30 days after the date of its filing.<sup>13</sup> However Rule 19b-4(f)(6)(iii)<sup>14</sup> permits the Commission to designate a shorter time if such action is consistent with the protection investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>15</sup> For these reasons, the Commission designates that the proposed rule change has become effective and operative immediately.

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. 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](mailto:rule-comments@sec.gov). Please include Filed No. SR-PCX-2005-106 on the subject line.

<sup>6</sup> 400 F.3d 1119 (9th Cir. 2005).

<sup>7</sup> *Jevne v. The Superior Court of Los Angeles County*, S121532 (CA Sup. Ct. May 23, 2005).

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

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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> California Rules of Court, Division VI of the Appendix.

### Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File No. SR-PCX-2005-106. 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 Room. Copies of such filing will also 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 No. SR-PCX-2005-106 and should be submitted on or before October 25, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Jonathan G. Katz,**  
Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52523; File No. SR-PCX-2005-98]

#### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend Its Minor Rule Plan and Recommended Fine Schedule in Connection With Rules Regarding Principal Orders, Principal Acting as Agent Orders, and Limitations on Principal Order Access

September 28, 2005.

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 August 16, 2005, 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. On September 27, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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

PCX proposes to amend its Minor Rule Plan ("MRP") and Recommended Fine Schedule ("RFS") under PCX Rule 10.12 with respect to provisions of the PCX Options Linkage program ("Linkage") that relate to Principal Orders ("P Orders"), Principal Acting as Agent Orders ("P/A Orders"), and Limitations on Principal Order Access. The text of the proposed rule change is available on the Exchange's Internet Web site (<http://www.pacificex.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

#### 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 aspects of such statements.

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

##### 1. Purpose

The Exchange's MRP, which incorporates the RFS, under PCX Rule 10.12 provides for an abbreviated procedure for the resolution of minor rule violations. The Exchange is proposing to amend the MRP and RFS to bring additional rules within their coverage. PCX believes that inclusion of such matters would provide a fair means of promptly resolving minor rule violations that do not rise to the level of formal disciplinary proceedings and enforcement action.

Specifically, the Exchange is proposing to add the violation of its Linkage rules relating to: (i) P Orders and P/A Orders (PCX Rules 6.93(a), (b), (c)(1), (d), and (e)), which require OTP Holders and OTP Firms<sup>4</sup> to observe certain time constraints and Linkage order procedures in sending and receiving P Orders and P/A Orders through Linkage; and (ii) Limitations on Principal Order Access (also known as 80/20) (PCX Rule 6.96), which prohibits the sending of P Orders in an eligible option class through Linkage for a given quarter if a market maker effected 20 percent or more of its volume by sending P Orders through Linkage. As proposed, an OTP Holder or OTP Firm, who fails to follow the Linkage rules set forth above, would be fined \$500 for the first violation, \$1,000 for the second violation, and \$2,500 for the third violation.<sup>5</sup>

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 Exchange also believes that the proposed rule change should aid PCX in carrying out its surveillance and enforcement functions. The Exchange represents that

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, the Exchange incorporated additional provisions under PCX Rule 6.93 to apply to the Minor Rule Plan and Recommended Fine Schedule, provided more detailed descriptions of the PCX Rules that would apply to the Minor Rule Plan and Recommended Fine Schedule under this proposed rule change, and made other non-substantive changes to clarify the purpose of the proposal.

<sup>4</sup> The terms "OTP Holder" and "OTP Firm" are defined in PCX Rules 1.1(q) and 1.1(r), respectively.

<sup>5</sup> If the PCX determines that a violation is not minor in nature, including repeated violations of a PCX Rule, the PCX may, at its discretion, proceed under PCX Rule 10.4 (Complaints) rather than under the MRP. See PCX Rule 10.12(f).

<sup>16</sup> 17 CFR 200.30-3(a)(12).