

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received. OCC will notify the Commission of any written comments it receives.

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

Within thirty-five 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 ninety 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 self-regulatory organization 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. 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-99-01 and should be submitted by July 6, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-14991 Filed 6-11-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41487; File No. SR-PCX-98-35]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding the Confirmation and Affirmation of Securities Transactions

June 7, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 30, 1998, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") and on November 16, 1998, and May 28, 1999, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by PCX. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will permit PCX members to use the facilities of a qualified vendor or an entity that has obtained an exemption from registration as a clearing agency for the electronic confirmation and affirmation of depository eligible transactions.²

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

In its filing with the Commission, 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. 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

The PCX is proposing to amend Rule 9.12 to allow qualified vendors of electronic trade confirmation ("FTC") services that are not registered clearing agencies to provide electronic trade

confirmation/affirmation services for institutional trades. The rule is also being amended to allow entities that have obtained exemptions from clearing agency registration specifically so that they can offer confirmation/affirmation services to provide such services for institutional trade.

Rule 9.12 was originally adopted to protect broker-dealers from problems relating to financial exposure associated with inaccurate and filed institutional transactions. Financial exposure results from institutional customers that settle their trades on a receipt versus payment ("RVP") or delivery versus payment ("DVP") basis. This permits them to delay payment for securities until the securities are delivered to their custodian and to delay delivery of securities until payment is received. Additional financial exposure results when the broker-dealer sells or purchases securities on behalf of an institutional customer from another broker-dealer. In such a situation the broker-dealer is subject to financial exposure until the institution's custodian delivers securities or makes payment that the broker-dealer will use to cover its trade with the other broker-dealer. If there is a delay in settlement with the institution or the institution refuses to recognize and settle the trade, the broker-dealer is still obligated to settle its trade with the other broker-dealer.

Certain vendors of ETC services have requested that they be allowed to provide confirmation/affirmation services for institutional trades even though they are not registered clearing agencies. PCX is proposing to amend Rule 9.12 so that either a clearing agency³ or a qualified vendor may provide electronic confirmation and affirmation of all depository eligible transactions to be settled on an RVP/DVP basis. In order to become a qualified vendor under the rule change, an ETC vendor will be required to certify to its customers that:

(1) With respect to its electronic trade confirmation/affirmation system, it has a capacity requirements, evaluation, and monitoring process that allows it to formulate current and anticipated estimated capacity requirements;

(2) Its electronic trade confirmation/affirmation system has sufficient capacity to process the specified volume of data that it reasonably anticipates to be entered into its

³ For purposes of Rule 9.12, clearing agency means a clearing agency as defined in Section 3(a)(23) of the Act that is registered with the Commission or that has obtained from the Commission an exemption from registration granted specifically to allow the clearing agency to provide confirmation/affirmation services.

¹ 15 U.S.C. 78s(b)(1).

² The text of the amendments is attached as Exhibit A to this notice.

⁶ 17 CFR 200.30-3(a)(12).

electronic trade confirmation/affirmation service during the upcoming year;

(3) Its electronic trade confirmation/affirmation system has formal contingency procedures, the entity has followed a formal process of reviewing the likelihood of contingency occurrences, and the contingency protocols are reviewed and updated on a regular basis;

(4) Its electronic trade confirmation/affirmation system has a process for preventing, detecting, and controlling any potential or actual systems integrity failures and its procedures designed to protect against security breaches are followed; and

(5) Its current assets exceed its current liabilities by at least \$500,000.

In addition, a qualified vendor will be required initially and annually to submit to PCX and to the Commission staff a report prepared by independent audit personnel (referred to in the rule change as "Auditor's Report"). Each Auditor's Report must: (1) verify the certifications described above; (2) contain a risk analysis of all of the entity's information technology systems; and (3) contain the written response of the entity's management to the Auditor's Report's verifications and risk analysis. The Auditor's Report must be deemed not unacceptable by Commission staff.⁴

Qualified vendors will be subject to ongoing requirements under the rule change. For each transaction in which it provides confirmation/affirmation services, a qualified vendor will be required to: (1) deliver a trade record to a registered clearing agency in the clearing agency's format; (2) obtain a control number for the trade record from the clearing agency; (3) cross reference the control number to the confirmation and subsequent affirmation of the trade; and (4) include the control number when delivering the affirmation of the trade to the clearing agency. A qualified vendor will be required to notify the PCX and the Commission staff in writing of any changes to its systems that significantly affect or have the potential to significantly affect its electronic trade confirmation/affirmation system. In addition, a qualified vendor will be required to supply supplemental information regarding its confirmation/affirmation system as requested by PCX or by the Commission staff. If a qualified vendor

intends to cease providing confirmation/affirmation services, it must notify PCX and the Commission staff in writing.

PCX believes that the proposal is consistent with Section 6(b) of the Act⁵ in general and with Section 6(b)(5) of the Act⁶ 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 to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PCX 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

Section 6(b)(5) of the Act⁷ requires, among other things, that PCX's rules be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. In addition, Section 6(b)(8) of the Act⁸ requires that PCX's rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes that PCX's proposed rule change is consistent with its obligations under the Act because it will require unregulated entities that wish to provide confirmation/affirmation services to establish links and interfaces with a registered clearing agency. This requirement should increase cooperation and coordination among PCX's members, registered clearing agencies, and entities that become qualified vendors under the rule change.

In addition, in reviewing the proposed rule change the Commission has considered whether the proposed rule change would impose any burden

on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes that the rule change has been carefully designed to allow unregistered ETC vendors to provide confirmation/affirmation services for institutional trades in a manner which is not unduly burdensome for ETC vendors and which preserves the safety and soundness of the national system for the clearance and settlement of securities transactions. Therefore, the Commission believes that PCX's proposed rule change should not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow PCX to immediately conform its Rule 9.12 to the recently amended confirmation/affirmation rules of the Municipal Securities Rulemaking Board ("MSRB"), National Association of Securities Dealers ("NASD"), and New York Stock Exchange ("NYSE").⁹

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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of PCX. All submissions should refer to File No. SR-PCX-98-35 and should be submitted by July 6, 1999.

⁴ At this time, the Commission staff intends to indicate that an entity's initial Auditor's Report is not unacceptable by issuing a letter to the entity stating that it will not recommend enforcement action against any of PCX's member organizations that elect to use the confirmation/affirmation systems of the entity. Subsequent Auditor's Reports submitted to the Commission staff by the qualified vendor will be considered acceptable unless the Commission staff otherwise informs the qualified vendor.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(8).

⁹ Securities Exchange Act Release No. 41378 (May 7, 1999), 64 FR 25940 [File Nos. SR-MSRB-98-06, SR-NASD-98-20, SR-NYSE-98-07].

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-PCX-98-35) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

Exhibit A

Additions *italicized*
Deletions [bracketed]

Text of the Proposed Rule Change: COD Orders—Partial Delivery

Rule 9.12(a)(1)–(3) No change.

(4) No change.

(A)–(B)(i)–(ii) No change.

(5) [The customer or its agent shall utilize the facilities of a securities depository for the confirmation, acknowledgement, and book entry settlement of all depository eligible transactions.] *The facilities of a Clearing Agency must be utilized for the book-entry settlement of all Depository Eligible Transactions except for transactions that are to be settled outside the United States. The facilities of either a Clearing Agency or a Qualified Vendor must be utilized for the electronic confirmation and affirmation of all Depository Eligible Transaction.*

(A) For the purpose of this rule, “securities depository” [shall] means a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934 that is registered with the Securities and Exchange Commission pursuant to Section 17A(b)(2) of the Act.

(B) For the purpose of this rule “depository eligible transactions” [shall] means transactions in those securities for which confirmation, *affirmation* [acknowledgment] and book entry settlement can be performed through the facilities of a securities depository as defined in Rule 9.12(a)(5)(A).

(C) For the purpose of this rule “Clearing Agency” means a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934 that is registered with the Securities and Exchange Commission pursuant to Section 17A(b)(2) of the Act or that has obtained from the Commission an exemption from registration granted specifically to allow the clearing agency to provide confirmation/affirmation services.

(D) “Qualified Vendor” means a vendor of electronic confirmation and affirmation services that:

(i) will, for each transaction subject to this rule: (a) deliver a trade record to a Clearing Agency in the Clearing Agency’s format; (b) obtain a control number for the trade record from the Clearing Agency; (c) cross-reference the control number to the confirmation and subsequent affirmation of the trade; and (d) include the control number when delivering the affirmation of the trade to the Clearing Agency;

(ii) certifies to its customers: (a) with respect to its electronic trade confirmation/

affirmation system, that it has a capacity requirements, evaluation, and monitoring processes that allow the vendor to formulate current and anticipated estimated capacity requirements; (b) that its electronic trade confirmation/affirmation system has sufficient capacity to process the specified volume of data that it reasonably anticipates to be entered into its electronic trade confirmation/affirmation service during the upcoming year; (c) that its electronic trade confirmation/affirmation system has formal contingency procedures, that the entity has followed a formal process of reviewing the likelihood of contingency occurrences, and that the contingency protocols are reviewed and updated on a regular basis; (d) that its electronic trade confirmation/affirmation system has a process for preventing, detecting, and controlling any potential or actual systems integrity failures, and its procedures designed to protect against security breaches are followed; and (e) that its current assets exceed its current liabilities by at least five hundred thousand dollars;

(iii) has submitted and will continue to submit on an annual basis an Auditor’s Report to the Exchange and to the Commission Staff which is not deemed unacceptable by the Commission Staff. An Auditor’s Report will be deemed unacceptable if it contains any findings of material weakness;

(iv) notifies the Exchange and the Commission Staff immediately in writing of any changes to its systems that significantly affect or have the potential to significantly affect its electronic trade confirmation/affirmation systems including, without limitation, changes that: (a) affect or potentially affect the capacity or security of its electronic trade confirmation/affirmation system; (b) rely on new or substantially different technology; or (c) provide a new service to the Qualified Vendors’ electronic trade confirmation/affirmation system;

(v) immediately notifies the Exchange and Commission Staff, in writing, if it intends to cease providing services;

(vi) provides the Exchange with copies of any submission to the Commission Staff made pursuant to Sections (a)(5)(D)(ii), (iii), (iv), or (v) of the Rule within ten business days; and

(vii) supplies supplemental information regarding their electronic trade confirmation/affirmation services as requested by the Exchange or the Commission.

(E) “Auditor’s Report” means a written report that is prepared by competent, independent, external audit personnel in accordance with the standards of the American Institute of Certified Public Accountants and the Information Systems Audit and Control Association and that (i) verifies the certifications contained in subsection (a)(5)(D)(ii) above; (ii) contains a risk analysis of all aspects of the entity’s information technology systems including, without limitation, computer operations, telecommunications, data security, systems development, capacity planning and testing, and contingency planning and testing; and (iii) contains the written response of the

entity’s management to the information provided pursuant to (i) and (ii) above.

Rule 9.12(b), No Change.

[FR Doc. 99–14989 Filed 6–11–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3188]

State of Georgia

Fulton County and the contiguous counties of Carroll, Douglas, Cobb, Cherokee, Forsyth, Gwinnett, DeKalb, Clayton, Fayette and Coweta in the State of Georgia constitute a disaster area as a result of damages caused by an apartment complex fire that occurred on May 3, 1999. Applications for loans for physical damages may be filed until the close of business on August 2, 1999 and for economic injury until the close of business on March 3, 2000 at the address listed below or other locally announced locations:

U.S. Small Business Administration,
Disaster Area 2 Office, One Baltimore
Place, Suite 300, Atlanta, GA 30308

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE ...	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.000
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE ...	4.000

The numbers assigned to this disaster are 318805 for physical damage and 9C9800 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 3, 1999.

Mary Kristine Swedin,
Acting Administrator.

[FR Doc. 99–14972 Filed 6–11–99; 8:45 am]

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¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30–3(a)(12).