

in particular, the requirements of section 15A of the Act<sup>24</sup> and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Act,<sup>25</sup> which, among other things, requires that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

At the Commission's request, Professor Michael Perino issued a report assessing the adequacy of NASD's and New York Stock Exchange, Inc.'s ("NYSE") arbitrator disclosure requirements and evaluating the impact of the recently adopted California Ethics Standards<sup>26</sup> on the current conflict disclosure rules of the self-regulatory organizations ("SROs").<sup>27</sup> The Perino Report recommended several amendments to SRO arbitrator classification and disclosure rules that, according to the Perino Report, might "provide additional assurance to investors that arbitrations are in fact neutral and fair." The Commission believes that this proposed rule change implements those recommendations, as well as several other related changes to the definition of public and non-public arbitrators that are consistent with the Perino Report recommendations.

Specifically, the Commission finds that NASD's proposal to amend the definition of non-public arbitrator in Rules 10308(a)(4) and 10308 (5)(A) of the Code is consistent with the Act. NASD's proposal, among other things, to exclude from the definition of public arbitrator attorneys, accountants, and other professionals whose firms have derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities defined as non-public is reasonably designed to reduce a perception of bias by NASD arbitration panel members. Some commenters argued that professional partners of all persons described in Rule 10308(a)(4)(C) of the Code be categorized as non-public regardless of whether the partner's firm meets the proposed 10 percent threshold while others argued that the 10% threshold is too broad and will adversely impact the depth of the pool of potential arbitrators. NASD's

proposal to expand the definition of "immediate family member" in Rule 10308(a)(5)(B) of the Code to include parents, stepparents, children, or stepchildren, as well as any member of the arbitrator's household is also consistent with the Act. Some commenters objected to this expansion of the definition of "immediate family member" stating that it too would reduce the number of competent candidates to serve as public arbitrators.

The Commission believes that NASD proposal to exclude from the definition of public arbitrator attorneys, accountants, and other professionals whose firms derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities defined in the definition of non-public arbitrator is reasonably designed to reduce a perception of bias by NASD arbitration panel members. In addition, the Perino Report recommended that NASD consider an expansion of the definition of "immediate family member" to include parents and children, even if the parent or child do not share the same home or receive substantial support from a non-public arbitrator.<sup>28</sup> NASD considered the issue and determined to expand the term. The Commission also believes it is reasonable for NASD to further expand the definition of non-public arbitrator by including stepparents and step children as well as parents, children, and any household member in the definition of immediate family member. The Perino Report also noted that "no classification rule could ever precisely define public and non-public arbitrators; there will always be classification questions at the margins about which reasonable people will differ."<sup>29</sup> Thus, the Commission believes that the amendments to the definition of public arbitrator, including the 10 percent threshold and definition of "immediate family member" are consistent with the Act.

## V. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>30</sup> that the proposed rule change (File No. SR-NASD-2003-95) is approved.

<sup>28</sup> See *id.*

<sup>29</sup> See *id.*

<sup>30</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>31</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-9163 Filed 4-21-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49569; File No. SR-PCX-2004-26]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. To Clarify the PCX General Membership Fees Portion of the PCX Schedule of Fees and Charges

April 15, 2004.

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 April 6, 2004, 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 the Exchange. On April 14, 2004, the Exchange amended the proposed rule change.<sup>3</sup> The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6)<sup>5</sup> thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>31</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> See April 13, 2004 letter from Tania J.C. Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original proposed rule change. In Amendment No. 1, the PCX asks the Commission to review the proposed rule change pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. The Commission considers the original proposed rule change to have satisfied the five-day pre-filing notice requirement under Rule 19b-4(f)(6). Additionally, for purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on April 14, 2004, the day the PCX filed Amendment No. 1. 17 CFR 240.19b-4(f)(6).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>24</sup> 15 U.S.C. 78o-3.

<sup>25</sup> 15 U.S.C. 78o-3(b)(6).

<sup>26</sup> See California Rules of Court, Division VI of the Appendix, entitled, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration."

<sup>27</sup> See Perino Report, *supra* note 15.

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

The Exchange is proposing to make clarifying changes to its Schedule of Fees and Charges ("Schedule"). The text of the proposed rule change is available at the PCX 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 PCX 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 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 Exchange is proposing to make two clarifying amendments to the PCX General Membership Fees portion of its Schedule.

First, the Exchange wishes to make a clarifying change to the "Initial Membership Fee" portion of the Schedule. On December 12, 2003, the Exchange submitted a rule filing to amend PCX's membership-related fees portion of the Schedule, which became effective upon filing.<sup>6</sup> In that filing (SR-PCX-2003-69), the Exchange proposed to amend the structure of its Initial Membership Fee and incorporate a flat fee of \$1,500 for all seat activations for all Member Organizations and Nominees.<sup>7</sup> While the simplicity of the new fee structure has been successful, there has been some confusion as to the fee name. Currently, the fee is called "Initial Membership Fee," which is a misnomer as the fee relates specifically to membership activations. Hence, the Exchange wishes to accurately reflect this fee as "Activation Fee."

Second, the Exchange proposes to make clarifying amendments to the "Options Orientation Fee" portion of the Schedule. On September 29, 2003, the Exchange filed with the Commission a

proposed rule change to amend the Options Orientation Fee, which became effective upon filing.<sup>8</sup> In that filing (SR-PCX-2003-57), the Exchange restructured its Options Orientation Fee as the Exchange transitioned its orientation and testing process from a third party provider to the PCX and NASD. Thus, the restructured "Options Orientation Fee" is only intended to apply to applicants who are required to complete the PCX Orientation and Testing Program in order to satisfy applicable examination requirements set forth in PCX Rule 1.7. For these applicants, the investigation and fingerprinting fees are included as part of the Options Orientation Fee. Applicants who have otherwise satisfied applicable examination requirements of PCX Rule 1.7 (e.g., Series 7, Series 44, Series 45, etc.), and thus are not required to complete the PCX Orientation and Testing Program, are only assessed the \$125 investigation fee and the \$35 fingerprinting fee. In other words, these applicants will not be assessed the \$1,000 Options Orientation Fee. There has been confusion among the Members as to whether the Options Orientation Fee is inclusive of the investigation and fingerprinting fees, and vice versa. Thus, the Exchange wishes to clarify the aforementioned fees by including the details stated above in the Schedule.

#### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with section 6(b)<sup>9</sup> of the Act, in general, and furthers the objectives of section 6(b)(5),<sup>10</sup> in particular, because it is designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market 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 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**

Because the foregoing 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, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> At any time within 60 days of the filing of the 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.

The PCX has asked the Commission to waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the clarification to be implemented immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>13</sup>

## **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 File Number SR-PCX-2004-26 on the subject line.

#### *Paper comments:*

<sup>6</sup> See Securities Exchange Act Release No. 48971 (Dec. 22, 2003), 68 FR 75307 (Dec. 30, 2003) (SR-PCX-2003-69).

<sup>7</sup> The initial seat activation fee applies to each Member Organization as well as each Nominee to a Member Organization since activation for each Nominee requires a separate administrative process.

<sup>8</sup> See Securities Exchange Act Release No. 48597 (Oct. 7, 2003), 68 FR 59439 (Oct. 15, 2003) (SR-PCX-2003-57).

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>13</sup> For purposes only of eliminating 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).

- 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-2004-26. 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 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-2004-26 and should be submitted on or before May 13, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

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

[FR Doc. 04-9162 Filed 4-21-04; 8:45 am]

BILLING CODE 8010-01-P

## DEPARTMENT OF STATE

[Public Notice: 4692]

### 60-Day Notice of Proposed Information Collection: Form DS-156, Nonimmigrant Visa Application; OMB Control Number 1405-0018

AGENCY: Department of State.

ACTION: Notice.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal**

**Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

*Type of Request:* Extension of currently approved collection.

*Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).

*Title of Information Collection:* Nonimmigrant Visa Application.

*Frequency:* Once per respondent.

*Form Number:* DS-156.

*Respondents:* Nonimmigrant visa applicants.

*Estimated Number of Respondents:* 12,300,000 per year.

*Average Hours Per Response:* 1 hour.

*Total Estimated Burden:* 12,300,000 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

#### FOR FURTHER INFORMATION CONTACT:

Public comments, or requests for additional information regarding the collection listed in this notice should be directed to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW., RM L-703, Washington, DC 20520, who may be reached at 202-663-1166.

Dated: April 5, 2004.

**Janice L. Jacobs,**

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 04-9168 Filed 4-21-04; 8:45 am]

BILLING CODE 4710-06-P

## DEPARTMENT OF STATE

[Public Notice 4693]

### Culturally Significant Objects Imported for Exhibition Determinations: "Inverted Utopias: Avant-Garde Art in Latin America"

AGENCY: Department of State.

ACTION: Notice; correction.

**SUMMARY:** On April 7, 2004, notice was published on page 18414 of the FR (volume 69, number 67) by the Department of State pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875]. The referenced Notice is corrected to include additional objects in the exhibition "Inverted Utopias: Avant-Garde Art in Latin America" imported from abroad for temporary exhibition within the United States, which I determine are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Houston from on or about June 20, 2004 to on or about September 12, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the additional exhibit objects covered by this Notice, contact Wolodymyr R. Sulzysky, the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619-5078). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: April 14, 2004.

**C. Miller Crouch,**

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04-9165 Filed 4-21-04; 8:45 am]

BILLING CODE 4710-08-P

## DEPARTMENT OF STATE

[Public Notice 4694]

### Culturally Significant Objects Imported for Exhibition Determinations: "People of the Twentieth Century": August Sander's Photographic Portrait of Germany

AGENCY: Department of State.

ACTION: Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of

<sup>14</sup> 17 CFR 200.30-3(a)(12).