

May 5, 2004.<sup>5</sup> The Commission received no comment letters on the proposal, as amended. The Exchange submitted Amendment No. 3 to the proposed rule change on June 18, 2004.<sup>6</sup> This order approves the proposed rule change and Amendments No. 1 and 2. Simultaneously, the Commission provides notice of filing of Amendment No. 3 and grants accelerated approval of Amendment No. 3.

## II. Discussion and Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>7</sup> and, particularly, section 6(b)(5) of the Act.<sup>8</sup> The Commission believes that the proposed amendments to NYSE Rule 122 setting forth conditions under which a Floor Broker may send a portion of an order to a specialist either manually or via a hand-held terminal for representation by the specialist while retaining the remainder of the same order are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that the ability to send orders from the Floor Broker's hand-held device directly to the specialist's limit order book may improve a broker's efficiency by allowing greater order management capabilities, while retaining the goals of the rule which, according to the NYSE, are to negate the possibility that the same customer could have unequal representation in the auction in parity situations, and to deter creating the appearance that there is greater trading interest in a stock. The Commission notes that the Exchange has represented that the proposed rule change, as amended, does not impose any new requirements or obligations and is consistent with current Exchange practice.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the

thirtieth day after the amendment is published in the **Federal Register**, pursuant to section 19(b)(2) of the Act.<sup>9</sup> Amendment No. 3 deleted reference to "an order" from the first sentence of the language proposed to be added to NYSE Rule 122. The Commission believes that the proposed change in Amendment No. 3, which only makes a technical change to the proposed rule text, raises no new issues of regulatory concern and, therefore, believes that good cause exists, consistent with Section 6(b)(5)<sup>10</sup> and Section 19(b)<sup>11</sup> of the Act, to accelerate approval of Amendment No. 3.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment for (<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-NYSE-2004-11 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-NYSE-2004-11. 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 the filing also will be

available for inspection and copying at the principal office of the NYSE. 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-NYSE-2004-11 and should be submitted on or before July 27, 2004.

## IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NYSE-2004-11) and Amendments No. 1 and 2 thereto are approved, and that Amendment No. 3 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49922; File No. SR-PCX-2003-51]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change, and Amendments No. 1, 2, and 3 Thereto, by the Pacific Exchange, Inc. Relating to Conditions of PCX Membership

June 28, 2004.

On October 29, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend its rules regarding the Exchange's conditions to membership. Specifically the Exchange proposes to: (1) Modify rules relating to PCX administered examinations for Floor Brokers and Market Makers; and (2) adopt a rule permitting waiver of the examination requirements by the Membership Committee. The PCX filed

<sup>5</sup> See Securities Exchange Act Release No. 49625 (April 28, 2004), 69 FR 25160.

<sup>6</sup> See letter from Darla C. Stuckey, NYSE, to Nancy J. Sanow, Division, Commission, dated June 17, 2004 ("Amendment No. 3"). In Amendment No. 3, the NYSE corrected a typographical error in the proposed rule text.

<sup>7</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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.

Amendments No.1,<sup>3</sup> No. 2,<sup>4</sup> and No. 3,<sup>5</sup> on December 18, 2003, March 15, 2004, and April 23, 2004, respectively. The proposed rule change, as amended, was published for comment in the **Federal Register** on May 19, 2004.<sup>6</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>7</sup> and, in particular, the requirements of Section 6 and Section 15 of the Act.<sup>8</sup> Specifically, Section 6(c)(3)(A) of the Act provides that a national securities exchange may deny membership to, or condition the membership of, a registered broker-dealer if any natural persons associated with the broker or dealer do not meet the standards of training, experience and competence as are prescribed by the rules of the exchange.<sup>9</sup> Moreover, Section 15(b)(7)(C) of the Act provides that the Commission may rely on the registered securities associations and national securities exchanges to "require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange."<sup>10</sup> To further the goals of Section 15(b)(7) of the Act, the Commission in 1993 adopted Rule 15b7-1,<sup>11</sup> which prohibits registered broker-dealers from effecting any transaction in, or inducing the purchase or sale of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other

qualification standards (including but not limited to submitting and maintaining all required forms, paying all required fees and passing any required examinations) established by the rules of any national securities exchange of which such broker or dealer is a member.

The Commission believes that the Exchange should be able to maintain the integrity and competency of securities industry personnel in its market under the proposed rule change. The proposed rule change will extend the time period when a former member of the PCX or another self-regulatory organization ("SRO") may have taken an examination from two years to five years if the applicant has been a member of an SRO within six months of the application date for Exchange membership. In addition, the proposal allows the Membership Committee to waive the examination requirement if the Committee believes the applicant is qualified based upon the applicant's industry experience, the type of registration requested, the previous history of the applicant with the PCX and any other examinations the applicant has successfully completed that may be considered acceptable substitutes.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change and Amendments No. 1, 2, and 3 thereto (File No. SR-PCX-2003-51) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49933; File No. SR-PCX-2004-57]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the System Phase-In of PCX Plus

June 28, 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 June 28, 2004, the Pacific Exchange, Inc.

("Exchange" or "PCX") 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 PCX. 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 proposes to amend PCX Rule 6.90, governing PCX Plus, in order to extend the system phase-in period from June 30, 2004 until December 31, 2004.

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

\* \* \* \* \*

### Rule 6—Options Trading

\* \* \* \* \*

#### PCX Plus

Rule 6.90(a)—No Change.

(b) System Phase-In and Applicability of the Rules. The PCX estimates that the rules applicable to PCX Plus will be implemented gradually on an issue-by-issue basis beginning October 6, 2003, and will become completely operative and applicable to all options issues by [June 30, 2004] *December 31, 2004*. At that time, the rules relating to PCX Plus will supercede existing rule that are inapplicable to the new trading environment.

(c)–(h)—No change.

\* \* \* \* \*

### 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 Exchange proposes to amend PCX Rule 6.90(b) governing the PCX Plus

<sup>3</sup> See Letter from Steven B. Maitlin, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 17, 2003 ("Amendment No. 1").

<sup>4</sup> See Letter from Steven B. Maitlin, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division, Commission, dated March 12, 2004 ("Amendment No. 2").

<sup>5</sup> See Letter from Steven B. Maitlin, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division, Commission, dated April 22, 2004 ("Amendment No. 3").

<sup>6</sup> See Securities Exchange Act Release No. 49681 (May 11, 2004), 69 FR 75010.

<sup>7</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f and 78o.

<sup>9</sup> 15 U.S.C. 78f(c)(3)(A).

<sup>10</sup> 15 U.S.C. 78o(b)(7)(C).

<sup>11</sup> 17 CFR 240.15b7-1.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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.