

The Commission will hear oral argument on an appeal by Rita J. McConville from the decision of an administrative law judge. The administrative law judge found that McConville, formerly the chief financial officer of Akorn, Inc. ("Akorn"), had significant responsibility for the financial statements in the Form 10-K for the year ended December 31, 2000 (the "2000 Form 10-K") filed by Akorn, which materially inflated Akorn's accounts receivable, net sales, and assets; caused Akorn to maintain inaccurate books and records; and falsely assured Akorn's auditors that the financial statements in the 2000 Form 10-K complied with Generally Accepted Accounting Principles and that she did not know of any events that would materially impact those financial statements. In so doing, the law judge found, McConville violated Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 and Rules 10b-5, 13b2-1 and 13b2-2 thereunder, and caused Akorn to violate Sections 13(a) and 13(b)(2) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder. The law judge ordered McConville to cease and desist from violating and causing violations of these provisions, and to pay disgorgement in the amount of \$115,858, plus prejudgment interest.

Among the issues likely to be argued are:

1. Whether McConville's involvement in the preparation and filing of the 2000 Form 10-K was sufficient to provide a basis for liability;

2. Whether McConville knew that Akorn did not have a system of internal accounting controls for its accounts receivable necessary for the preparation of accurate financial statements and knowingly failed to implement such a system;

3. Whether the Order Instituting Proceedings gave McConville adequate notice of the claims lodged against her and the grounds on which those claims allegedly rested;

4. Whether a cease-and-desist order against McConville is in the public interest; and

5. Whether disgorgement should be ordered, and if so, in what amount.

The subject matter of the closed meeting scheduled for Wednesday, May 25, 2005, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: May 17, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05-10173 Filed 5-17-05; 4:20 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51696; File No. SR-PCX-2005-50]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to a Pilot Rule Extension of a Waiver of California Arbitrator Disclosure Standards

May 13, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 12, 2005 and on May 13, 2005 (Amendment No. 1), 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange and its wholly owned subsidiary PCX Equities, Inc. ("PCXE") are proposing to extend the pilot rule in PCX Rule 12.1(i) and PCXE Rule 12.2(h), which requires industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers (and, in industry cases, upon the request of associated persons with claims of statutory employment discrimination), for an additional six-month pilot period, until November 26, 2005.

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 III 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

On November 21, 2002, the Commission approved, for a six-month pilot period, the Exchange's proposal to amend PCX and PCXE arbitration rules to require industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers or, in employment discrimination cases, upon the request of associated persons.³ The Commission approved an extension of the pilot period on May 15, 2003,⁴ November 19, 2003,⁵ May 24, 2004,⁶ and November 23, 2004.⁷ The pilot period is currently set to expire on May 25, 2005.

On July 1, 2002, the Judicial Council of the State of California adopted new rules that mandated extensive disclosure requirements for arbitrators in California (the "California Standards"). The California Standards are intended to address perceived conflicts of interest in certain commercial arbitration proceedings. As a result of the imposition of the California Standards on arbitrations conducted under the auspices of self-regulatory organizations ("SROs"), the National Association of Securities Dealers, Inc. ("NASD") and the New York Stock Exchange ("NYSE") suspended the appointment of arbitrators for cases pending in California, and filed a joint complaint in federal court for declaratory relief in which they contend that the California Standards cannot lawfully be applied to NASD and NYSE because the California Standards are preempted by federal law and are inapplicable to SROs under

³ See Exchange Act Release No. 46881 (November 21, 2002), 67 FR 71224 (November 29, 2002) (Order approving SR-PCX-2002-71).

⁴ See Exchange Act Release No. 47872 (May 15, 2003), 68 FR 28869 (May 27, 2003) (Order approving SR-PCX-2003-22).

⁵ See Exchange Act Release No. 48806 (November 19, 2003), 68 FR 66521 (November 26, 2003) (Order approving SR-PCX-2003-61).

⁶ See Exchange Act Release No. 49758 (May 24, 2004), 69 FR 30734 (May 28, 2004) (Order approving SR-PCX-2004-25).

⁷ See Exchange Act Release No. 50731 (November 23, 2004), 69 FR 69660 (November 30, 2004) (Order approving SR-PCX-2004-104).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

state law.⁸ Subsequently, in the interest of continuing to provide investors with an arbitral forum in California pending the resolution of the applicability of the California Standards, the NASD and NYSE filed separate rule proposals with the Commission that would temporarily require their members to waive the California Standards if all non-member parties to arbitration have done so. The Commission approved the NASD's rule proposal on September 26, 2002⁹ and the NYSE's rule proposal on November 12, 2002.¹⁰ Both the NASD and the NYSE filed rule proposals to further extend the pilot period for additional six-month periods.¹¹

Since the NASD's and NYSE's lawsuit relating to the application of the California Standards has not been resolved, PCX is now requesting an extension of the pilot for an additional six months (or until the pending litigation has resolved the question of whether or not the California Standards apply to SROs). PCX requests that the pilot be extended for six months

⁸ See Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc., v. Judicial Council of California*, filed in the United States District Court for the Northern District of California, No. C 02 3486 SBA (July 22, 2002). For a more complete discussion of the various pending cases related to the California Standards, see Exchange Act Release No. 50971 (January 6, 2005), 70 FR 2685 (January 14, 2005) (Notice regarding SR-NASD-2004-180), Exchange Act Release No. 51213 (February 16, 2005), 70 FR 8862 (February 23, 2005) (Order approving SR-NASD-2004-180) and Exchange Act Release No. 51395 (March 18, 2005), 70 FR 15137 (March 24, 2005) (Order approving SR-NYSE-2005-14).

⁹ See Exchange Act Release No. 46562 (September 26, 2002), 67 FR 62085 (October 3, 2002) (Order approving SR-NASD-2002-126). Thereafter, the pilot period was extended to September 30, 2003. See Exchange Act Release No. 48187 (July 16, 2003), 68 FR 43553 (July 23, 2003) (Order approving SR-NASD-2003-106).

¹⁰ See Exchange Act Release No. 46816 (November 12, 2002), 67 FR 69793 (November 19, 2002) (Order approving SR-NYSE-2002-56). Thereafter, the pilot period was extended to September 30, 2003. See Exchange Act Release No. 47836 (May 12, 2003), 68 FR 27608 (May 20, 2003) (Order approving SR-NYSE-2003-16).

¹¹ See Exchange Act Release No. 48553 (September 26, 2003), 68 FR 57494 (October 3, 2003) (Order approving SR-NASD-2003-144); Exchange Act Release No. 49452 (March 19, 2004) 69 FR 17010 (March 31, 2004) (Order approving SR-NASD-2004-40); Exchange Act Release No. 48552 (September 26, 2003), 68 FR 57496 (October 3, 2003) (Order approving SR-NYSE-2003-28); Exchange Act Release No. 49521 (April 2, 2004), 69 FR 18661 (April 8, 2004) (Order approving SR-NYSE-2004-18); Exchange Act Release No. 50447 (September 24, 2004), 69 FR 58567 (September 30, 2004) (Order approving SR-NASD-2004-126); Exchange Act Release No. 50449 (September 24, 2004), 69 FR 58985 (October 1, 2004) (Order approving SR-NYSE-2004-50); Exchange Act Release No. 51213 (February 16, 2005), 70 FR 8862 (Order approving SR-NASD-2004-180); and Exchange Act Release No. 51395 (March 18, 2005), 70 FR 15137 (March 24, 2005) (Order approving SR-NYSE-2005-14).

beginning on May 26, 2005. The extension of time permits the Exchange to continue the arbitration process using PCX rules regarding arbitration disclosures and not the California Standards. No substantive changes are being made to the pilot program, other than extending the operation of pilot program.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,¹² in general, and Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade by ensuring that OTP Holders, OTP Firms, ETP 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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2005-50 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-2005-50. 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, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. 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-2005-50 and should be submitted on or before June 10, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.¹⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁵ in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

The Commission also believes that the proposed rule change raises no issues that have not been previously considered by the Commission. Granting accelerated approval here will merely extend a pilot program that is designed to inform aggrieved parties about their options regarding mechanisms that are available for resolving disputes with broker-dealers. The PCX and PCXE adopted the pilot program under PCX Rule 12.1(i) and PCXE Rule 12.2(h), respectively, in

¹⁴ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. ¹⁵ U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b).

¹³ 15 U.S.C. 78s(b)(5).

response to the purported imposition of the California Standards on Exchange arbitrations and arbitrators. The pilot rules are currently set to expire on May 25, 2005, and must be extended in order to continue to provide the waiver option until a final judicial determination is reached. During the period of this extension, the Commission and Exchange will continue to monitor the status of the pending litigation.

After careful consideration, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁶ for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the current extension of the pilot program, under PCX Rule 12.1(i) and PCXE Rule 12.2(h), expires on May 25, 2005. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) of the Act,¹⁷ to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-PCX-2005-50) is hereby approved on an accelerated basis, and that PCX Rule 12.1(i) and PCXE Rule 12.2(h) are extended until November 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-2525 Filed 5-19-05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 6, 2005

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST-2005-21122.

Date Filed: May 2, 2005.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 1230 dated 2 May 2005, Mail Vote 447—Resolution 024d—Currency Names, Codes, Rounding Units and Acceptability of

Currencies. Intended effective date: 1 May 2005.

Docket Number: OST-2005-21172.

Date Filed: May 4, 2005.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 1231 dated 2 May 2005, Resolution 002aa—General Increase Resolution except within Europe, between USA/US Territories and Austria, Belgium, Chile, Czech Republic, Finland, France, Germany, Iceland, Italy, Jordan, Korea (Rep. of), Malaysia, Netherlands, New Zealand, Panama, Scandinavia, Switzerland; PTC COMP 1232 dated 2 May 2005 Resolution 002a—General Increase Resolution between USA/US Territories and Austria, Belgium, Chile, Czech Republic, Finland, France, Germany, Iceland, Italy, Jordan, Korea (Rep. of), Malaysia, Netherlands, New Zealand, Panama, Scandinavia, Switzerland; Minutes: PTC COMP 1233 dated 4 May 2005 Intended effective date: 30 May 2005.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05-10090 Filed 5-19-05; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 6, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*see* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-2005-21130.

Date Filed: May 2, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 23, 2005.

Description: Application of Transportes Aereos de Cabo Verde d/b/a TACV, requesting a foreign air carrier permit to engage in: (a) Scheduled

foreign air transportation of persons, property and mail without frequency and capacity limitation, on all routes authorized in Annex I of the Bilateral Agreement for carriers designated by the Government of Cape Verde, namely: (i) From points behind Cape Verde via Cape Verde and intermediate points to a point or points in the United States and beyond; (ii) all-cargo service or services, between the United States and any point or points; (b) international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to, freight forwarder, split, and combination (passenger/cargo) charters): (i) Between any point or points in Cape Verde and any point or points in the United States; and (ii) between any point or points in the United States and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to Cape Verde for the purpose of carrying local traffic between Cape Verde and the United States.

Docket Number: OST-2005-21135.

Date Filed: May 2, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 23, 2005.

Description: Application of Jet Airways (India) Ltd., requesting a foreign air carrier permit authorizing it to engage in scheduled foreign air transportation of persons, property, and mail as follows: From points behind India, via India and intermediate points, to a point or points in the United States, and beyond. Jet Airways also requests that its foreign air carrier permit include authority to engage in charter foreign air transportation of persons, property, and mail between India and the United States and between the United States and third countries (provided that such charter traffic is carried on a flight that serves India for purposes of carrying traffic between India and the United States), without prior Department approval; and other charter trips.

Docket Number: OST-2005-21157.

Date Filed: May 3, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 24, 2005.

Description: Application of Executive Airlines, S.L., requesting a foreign air carrier permit authorizing it to engage in charter foreign air transportation of persons, property and mail between Spain and the United States and other

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).