

the Exchange.¹⁷ However, NYSE Rule 347 requires arbitration of claims "at the instance" of either party, and therefore may be waived, allowing the entire case to be heard in court. The parties may also avoid bifurcation by agreeing to proceed with all claims in a single forum. Given a choice, after a dispute has arisen, employees in many instances believe that arbitration is preferable to protracted and expensive litigation and will willingly make that choice.¹⁸

2. Statutory Basis

The proposed changes are consistent with Section 6(b)(5) of the Exchange Act in that they promote just and equitable principles of trade by insuring that members and member organizations 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 changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members Participants or Others.

The Exchange has neither solicited nor received written comments on the proposed rule changes.

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

Within 35 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 90 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 Exchange consents, the Commission will:

(A) By order approve the proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

¹⁷ The bifurcation of securities industry claims is not unprecedented. Before the Supreme Court's decision in *Shearson v. McMahon*, 482 U.S. 220 (1987) (holding that claims under the Exchange Act could be compelled to arbitration), the Supreme Court decided *Dean Witter Reynolds, Inc. v. Byrd*, 105 S. Ct. 1238 (1985). In *Byrd*, the dispute involved allegations of federal securities laws violations and pendent state law claims. The Court compelled the state law claims to arbitration and held that the federal securities laws claims could be heard in court.

¹⁸ See *Duffield v. Robertson Stephens & Company*, 1998 WL 227469 (9th Cir.).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 NYSE. All submissions should refer to File No. SR-NYSE-98-28 and should be submitted by October 22, 1998.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 98-26235 Filed 9-30-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40482; File No. SR-PCX-98-47]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a Supplemental Specialist Post Fee

September 25, 1998.

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 September 17, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by PCX.³ The

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On September 23, 1998, the Exchange filed Amendment No. 1 to the proposed rule filing, the

Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal, as amended.

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

PCX is proposing to adopt a Supplemental Specialist Post Fee that will apply when the Equity Floor Trading Committee permits a specialist firm to consolidate its specialist posts on the Equity Floors of the Exchange. The text of the proposed rule change is available at the Office of the Secretary, 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, 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 III 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

1. Purpose

Unlike other stock exchanges, PCX maintains a "specialist post" structure—rather than a "specialist unit" structure—on its Equity Floors. A "specialist post" structure requires each registered specialist to be assigned to a specific post where certain designated stocks are traded. If a specialist firm is operating ten specialist posts, for example, the firm would be required to maintain a specialist at each of the ten posts. By contrast, under a "specialist unit" structure, stocks are allocated to the specialist unit, rather than to a particular post or particular specialist. If 500 stocks are traded at a specialist unit, for example, it would be generally within the specialist firm's discretion to determine the number of specialists necessary to operate that unit.⁴

substance of which is incorporated into the notice. See letter from Michael Pierson, Senior Attorney, Regulatory Policy, PCX, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 22, 1998.

⁴ On the PCX Options Floor, Lead Market Makers ("LMMs"), who are like specialists in several respects, are permitted to run their operations in a

Although the Exchange intends to modify its rules to adopt a "specialist unit" structure for equity securities in the near future, the Exchange anticipates that it will take a significant amount of time to implement the necessary rule and structural changes. In the meantime, a number of PCX specialist firms have expressed an interest in achieving greater flexibility to reduce costs for their specialist operations. These firms desire to reduce the number of specialists they employ on PCX by collapsing one or more of their posts into their other posts. For example, a firm that operates ten posts, which requires the use of ten specialists, might propose to collapse two of its posts into the others, so that it would need only eight posts and eight specialists to make markets in its specialty stocks.

PCX's fee structure currently applies on a per post basis. Thus, if ten posts are consolidated into eight posts, fees previously paid for ten posts would only have to be paid for eight posts. The Exchange is now proposing to create a new fee that will apply to specialist firms that consolidate their posts. Under the proposal, if a firm consolidates its posts and this results in a reduction in the total number of specialist posts that the firm operates, the firm will be required to pay fixed specialist fees based on the number of posts that it operated prior to the consolidation. For example, assume that a specialist firm is operating ten posts with 50 stocks traded at each post. The Equity Floor Trading Committee ("EFTC") may permit the firm to reduce the number of posts that it operates from ten to nine, with 50 stocks being reallocated to the remaining posts. Under the proposal, if the EFTC approves the firm's request,⁵ the firm would be subject to the Supplemental Specialist Post Fee of \$6,750 per month as a condition of each post consolidation. This fee is equivalent to the fixed specialist fees

manner consistent with a unit structure. For example, if an LMM has been allocated 100 option issues for trading at an LMM Post on the Options Floor, it is within the discretion of the LMM to determine the number of registered Market Makers necessary to operate that post. There are no rules specifying the number of Market Makers that an LMM must maintain at a given post (other than the requirement that the LMM must be present at the trading post throughout the trading day). If an LMM maintains inadequate staffing, the Exchange may take corrective action through the evaluation and reallocation processes. See generally PCX Rule 6.82 and Options Floor Procedure Advice B-13.

⁵ The Exchange has recently adopted supplemental guidelines for the EFTC to consider in connection with member firm requests to consolidate their posts. See Securities Exchange Act Release No. 40449 (September 17, 1998), (File No. SR-PCX-98-46).

that would otherwise apply to each post before it collapsed.⁶ The fee will not apply in situations where all of the stocks from a specialist firm's post are transferred to a post or posts of another specialist firm.⁷

The purpose of the proposal is two-fold; First, it is intended to provide a way to afford relief to specialist firms, so that they can reduce redundancy made necessary by the specialist post structure, and thereby reduce their own operating costs. Second, it is intended to assure that the consolidation of posts on the Exchange Floors is revenue neutral for Exchange purposes. The Exchange needs to assure that it continues to collect sufficient fees for the specialist posts on its Equity Trading Floor so that it can continue funding its operations, including its regulatory program and oversight of specialist operations.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)⁸ of the Act, in general, and furthers the objective of Section 6(b)(4),⁹ in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. In most cases, a consolidation of posts will result in a specialist firm retaining most, if not all, of its specialty stocks, albeit operated by fewer specialists. It is reasonable to apply the same amount in fees imposed on the firm as if the posts were not collapsed because the proportion of allocated stocks will remain the same or close in number.¹⁰

The Exchange also believes the proposal is consistent with Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

⁶ These fees include: the specialists facility fee (\$300 per month per post); the specialist systems fee (\$1,550 per month per post); the market data fee (\$400 per month per post); the post cashing fee (\$2,150 per month per post); and the post clearing fee (\$2,350 per month per post)—for a total fee of \$6,750 per month. These fees will *not* include: General Membership Dues (\$250 per month per membership); and Floor Privilege Fee (\$165 per month for each registered floor member and registered clerk).

⁷ See Amendment No. 1.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ It is possible that the EFTC might, in some situations, require a reduction in the number of stocks traded at a given post as a precondition of a post consolidation. If the reduction is more than minor, however, a firm, as its own business decision, can choose not to consolidate its posts because of this precondition.

¹¹ 15 U.S.C. 78f(b)(5).

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 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. 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 at the Commission's Public Reference Room. 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-98-47 and should be submitted by October 22, 1998.

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

The Commission finds that PCX's proposal to establish a Supplemental Specialist Post Fee is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) and 6(b)(5) of the Act.¹²

Section 6(b)(4) requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) requires that the rules of an exchange be designed to

¹² 15 U.S.C. 78f(b)(4) and (b)(5).

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to protect investors and the public interest and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission believes that the proposal is consistent with these provisions of the Act because the new fee will apply in a non-discriminatory fashion to all firms that choose to consolidate their posts on the Exchange. Moreover, the proposal is designed to help reduce non-exchange related costs involved with maintaining a post without causing the Exchange to sacrifice needed revenues used to provide exchange services and to carry out its regulatory functions.

PCX has requested that the Commission approve the proposal on an accelerated basis. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that the proposal is reasonable given the exigent circumstances of the recent specialist post consolidations and the possibility of more consolidations on the floor of PCX. Currently, there are eighty-two specialist posts operating on PCX's Equity Floors. PCX has received six member firm applications to collapse eight of those posts.¹³ In addition, the Exchange anticipates further specialist post consolidations. In the absence of the proposal, the Exchange would sacrifice a substantial amount of its revenue in a short time, which could compromise its ability to perform its regulatory duties.

PCX has represented that it intends to modify its rules to adopt a "specialist unit" structure, as opposed to the "specialist post" structure it now operates. Such a structure could address the revenue issues raised by post consolidations by permitting exchange members to reallocate specialists without reducing the fees they pay to the Exchange to maintain the same level of service. As a result, the Commission views the Supplemental Specialist Post Fee as a temporary remedy to assist the Exchange in maintaining essential revenues while moving from a "specialist post" structure to a "specialist unit" structure.

It is therefore ordered, pursuant to Section 19(b)(2)¹⁴ of the Act that the

proposed rule change (SR-PCX-98-47) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Jonathan G. Katz,

Secretary.

[FR Doc. 98-26277 Filed 9-30-98; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3131]

State of Florida

Hillsborough County and the contiguous counties of Pasco, Pinellas, Polk, Hardee, and Manatee in the State of Florida constitute a disaster area as a result of damages caused by severe storms and flooding that occurred on September 20, 1998. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 23, 1998 and for loans for economic injury until the close of business on June 24, 1999 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	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster are 313106 for physical damage and 9A1200 for economic injury.

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

Dated: September 24, 1998.

Aida Alvarez,
Administrator.

[FR Doc. 98-26315 Filed 9-30-98; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3130]

State of New York

As a result of the President's major disaster declaration on September 11, 1998 for Public Assistance, and amendments thereto adding Individual Assistance effective September 14, 1998, I find that the Counties of Cayuga, Fulton, Herkimer, Madison, Monroe, Oneida, Onondaga, and Wayne in the State of New York constitute a disaster area due to damages caused by severe storms and high winds that occurred on September 7, 1998. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on November 13, 1998, and for loans for economic injury until the close of business on June 14, 1999 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in the State of New York may be filed until the specified date at the above location: Chenango, Cortland, Genesee, Hamilton, Lewis, Livingston, Montgomery, Ontario, Orleans, Oswego, Otsego, Saratoga, Seneca, St. Lawrence, and Tompkins.

The interest rates are:

	Percent
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	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

¹³Telephone conversation between Michael Pierson, Senior Attorney, Regulatory Policy, PCX, and Richard Strasser, Assistant Director, Division, Commission, on September 23, 1998.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).