

*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 extend the pilot revenue sharing program filed for immediate effectiveness on March 25, 2002.<sup>3</sup> Under the CSE's program for trading Nasdaq NM securities, member firms will receive a 75 percent revenue (75%) pro rata transaction credit on all Nasdaq Tape C market data revenue generated by member trading activity. The pilot program will expire August 30, 2002, if not renewed.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> generally, and section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade, and 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 proposal also is consistent with Section 6(b)(4) of the Act<sup>6</sup> in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting CSE members on a pro rata basis.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CSE does not believe that the proposed rule change will result in 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 were neither solicited nor received.

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

The foregoing rule change has become effective on filing pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(2) thereunder,<sup>8</sup> as establishing or changing a due, fee, or other charge paid solely by members of the CSE. At any time within 60 days of the filing of such

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.<sup>9</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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-2002-06 and should be submitted by July 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-46128; File No. SR-PCX-2002-26]**

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Maintenance of Books and Records**

June 26, 2002.

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>

<sup>9</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

<sup>10</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.

notice is hereby given that on April 22, 2002, 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, II and III below, which items have been prepared by the Exchange. PCX submitted Amendment No. 1 to the proposed rule change on June 11, 2002.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The PCX proposes new rules, PCX Rule 4.20 and 4.21, in order to codify the existing obligations of Members and Member Organizations to keep and preserve books and records. The text of the proposed rule change is below. Proposed new language is italicized; deleted language is in brackets.

*Books and Records*

Rule 4.20(a) [Reserved.] *Each Member and Member Organization must make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Securities Exchange Act of 1934 and the rules and regulations thereunder (including any interpretation relating thereto) as though such Members or Member Organization were a broker or dealer registered with the SEC pursuant to Section 15 of the Exchange Act. No Member or Member Organization may refuse to make available to the Exchange such books, records or other information as may be called for under the Rules or as may be requested in connection with an Exchange investigation.*

*Commentary:*

*.01 The following Exchange Rules contain specific requirements with regard to the maintenance, retention and furnishing of books, records and*

<sup>3</sup> In Amendment No. 1, the Exchange: (1) stated that the proposed rule change was being filed pursuant to Section 19(b)(2) of the Act and requested accelerated effectiveness; (2) revised typographical errors in the proposed rule text; (3) added the parenthetical (including any interpretation relating thereto) to proposed PCX Rule 4.20(a); and (4) clarified that the phrase "contra organization" in proposed PCX Rule 4.20(b) is an industry term of art that also means counter party. See letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 10, 2002 ("Amendment No. 1"). PCX further clarified that the phrase "contra organization" refers to the clearing firm. Telephone call between Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, and Jennifer Lewis, Attorney, Division, Commission, on June 19, 2002.

<sup>3</sup> Securities Exchange Act Release No. 45642 (March 26, 2002), 67 FR 15436 (April 1, 2002) (File No. SR-CSE-2002-03).

<sup>4</sup> 15 U.S.C. 78f(b).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

other information: Rules 1.16, 2.1, 2.4, 2.6, 2.7, 2.8, 2.10, 2.11, 2.12, 2.15, 2.18, 4.9, 4.10, 4.20, 4.21, 4.25, 6.14, 6.15, 6.16, 6.17, 6.18, 6.19, 6.39, 6.41, 6.46, 6.68, 6.69, 9.2, 9.17 and 9.18. The foregoing list is not intended to be exhaustive and Members and Member Organizations must comply with applicable record keeping and reporting requirements regardless of whether they are listed here.

\* \* \* \* \*

#### Daily Position Statements

Rule 4.20(b) Each Member and Member Organization must receive daily position statements with respect to securities held by the Options Clearing Corporation or any member thereof, the DTCC or any similar clearing organization and must reconcile securities and money balances at least once per month by comparing those position statements against the Member or Member Organization's books and records. Each Member or Member Organization must promptly report any differences to the contra organization. A Member or Member Organization who processes transactions through the Member or Member Organization's clearing firm's clearance account may utilize those clearance account records to satisfy this record keeping requirement provided that: (i) the Member Organization clearing firm complies with the provisions of SEC Rules 17a-3(b)(2) and 17a-4(i); (ii) the Member or Member Organization maintains those clearance account records pertaining to the daily activity and total position in each series of options; and (iii) the Member or Member Organization reconciles any discrepancies between the clearance account records and any financial reports that the Member or Member Organization is required to maintain pursuant to Rule 4.20(a). Each Member and Member Organization must maintain reports that evidence reconciliation for at least six years, the first two years in an easily accessible place.

#### Error Accounts

Rule 4.21(a) Each Member or Member Organization [whose principal business is] which conducts business as a floor broker on the Exchange and who is not self-clearing must establish and maintain an account with a clearing member of the Exchange, for the sole purpose of carrying positions resulting from bona fide errors made in the course of its floor brokerage business. With respect to options floor brokers only, such an account for option transactions must be maintained with a clearing

member [an entity] that is also a member of the Options Clearing Corporation.

(b) Each such Member or Member Organization which conducts business as a floor broker must make available to the Exchange, upon request, accurate and complete records of all trades cleared in such Member or Member Organization's error account. These records must include the audit trail data elements prescribed below:

(1) name or identifying symbol of the security;

(2) number of shares or quantity of security;

(3) transaction price;

(4) time of trade execution;

(5) executing broker badge number, or alpha symbol as may be used from time to time, in regard to its side of the contract;

(6) executing broker badge number, or alpha symbol as may be used from time to time, of the contra side to the contract;

(7) clearing firm number, or alpha symbol as may be used from time to time, in regard to its side of the contract;

(8) clearing firm number, or alpha symbol as may be used from time to time, in regard to the contra side of the contract;

(9) designation of whether the account for which the order was executed was that of a Member or Member Organization;

(10) the nature and amount of the error;

(11) the Member or Member Organization that cleared the error trade on the Member's or Member Organization's behalf;

(12) an explanation of the means by which the Member or Member Organization resolved the error;

(13) the aggregate amount of liability that the Member or Member Organization incurred and: (i) had outstanding as of the time each such error trade entry was recorded or (ii) had cleared by other Members or Member Organizations.

#### 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

Currently, Exchange rules obligate Members and Member Organizations to make, keep current, and preserve certain books and records.<sup>4</sup> In addition, the Exchange relies on the Commission's comprehensive books and records rules, Rule 17a-3<sup>5</sup> and Rule 17a-4<sup>6</sup> of the Act, as the basis of its authority to require Members and Member Organizations to maintain and retain books and records not covered under the Exchange's express rules.

The Exchange now proposes to adopt a new rule to codify books and records requirement and to make clear to Members and Member Organizations that the Commission's comprehensive books and records rule applies to all Members and Member Organizations. The Exchange also proposes to codify its policies with respect to maintenance of daily position statements and error account information.

As proposed, the new rule would require all Members and Member Organizations to make, keep current, and preserve such books and records as the Exchange may prescribe and as those that may be prescribed by the Act and the rules and regulations thereunder (including any interpretation relating thereto). The proposed rule further provides that no Member or Member Organization may refuse to make available to the Exchange such books, records or other information as may be called for under the PCX rules or as may be requested in connection with an Exchange investigation.

With respect to maintaining daily position statements, the proposed rule provides that each Member and Member Organization must receive daily position statements with respect to securities held by the Options Clearing Corporation or any member thereof, the DTCC or any similar clearing organization and must reconcile securities and money balances at least once per month by comparing those position statements against the Member or Member Organization's books and records. The proposed rule provides that a Member or Member Organization who processes transactions through the Member or Member Organization's

<sup>4</sup> See, e.g., PCX Rule 2.4 (Restrictions on Member Activities); PCX Rule 2.10 (Customer Statements); PCX Rule 4.25 (Supervision—Written Procedures); and PCX Rule 6.14 (General Comparison and Clearance Rules).

<sup>5</sup> 17 CFR 240.17a-3.

<sup>6</sup> 17 CFR 240.17a-4.

clearing firm's clearance account may utilize those clearance account records to satisfy this record keeping requirement provided that: (i) the Member Organization clearing firm complies with the provisions of Rules 17a-3(b)(2)<sup>7</sup> and 17a-4(i)<sup>8</sup> of the Act; (ii) the Member or Member Organization maintains those clearance account records pertaining to the daily activity and total position in each series of options; and (iii) the Member or Member Organization reconciles any discrepancies between the clearance account records and any financial reports that the Member or Member Organization is required to maintain. As proposed, each Member and Member Organization would be required to maintain reports that evidence reconciliation for at least six years, the first two years in an easily accessible place.

Regarding error accounts, the proposed rule provides that each Member or Member Organization which conducts business as a floor broker must make available to the Exchange, upon request, accurate and complete records of all trades cleared in such Member or Member Organization's error account. The proposed rule would also require that the error account records include certain audit trail data elements including, for example, name of the security, quantity and the nature and amount of the error.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>9</sup> 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 principles of trade, prevent fraudulent and manipulative acts and practices, and 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.

### *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

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 self-regulatory organization consents, the Commission will:

(A) By order approve such 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2002-26 and should be submitted by July 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SMALL BUSINESS ADMINISTRATION

### **Federal and State Technology Partnership Program to Provide Outreach and Technical Assistance to Small Technology-Based Businesses Interested in Becoming Involved or Presently Involved in Federal R & D Programs**

**AGENCY:** Small Business Administration.

**ACTION:** Program Announcement No. FAST-02-R-0002 technical amendment.

**SUMMARY:** A technical amendment to the U.S. Small Business Administration (SBA) Program Announcement No. FAST-02-0002. The amendment is being issued to address errors in the original document. Corrections pertain to the cover letter to prospective applicants; Section V, Glossary of Terms; Section VI, Program Overview, Items L, P and S; Section VII, Organization and Staff Qualifications.

### **Letter to Prospective Applicants**

*Current:* Federal and State Technology Transfer Partnership Program.

*Correction:* Delete the word Transfer in the Subject line.

### **Section V—Glossary of Terms—Page 7**

*Current:* Socially and economically disadvantaged.

*Correction:* Socially and economically disadvantaged (minority-owned).

### **Section VI—Item L—Page 10**

*Current:* XXXXXXXX.

*Correction:* Delete and replace XXXXX \* \* \* with July 25, 2002.

### **Section VI—Item P—Page 12**

*Current:* Applicants receiving scores of 70 or greater will than be submitted to the second tier Committee for final review and selection. Applications for new and incumbent applicants will undergo a second level "joint" review by program officials representing the SBA, Department of Defense and National Science Foundation.

*Correction:* Delete current sentences and replace with—(Last sentence, first paragraph) Scores for both new and incumbent applicants will then be compiled and ranked. (First sentence, second paragraph) Proposals that meet the baseline score of 90 will be forwarded to the second tier evaluation panel for review and funding recommendation.

Applications for new and incumbent applicants with a score of 90 or above will undergo a second level "joint" review by program officials representing

<sup>7</sup> 17 CFR 240.17a-3(b)(2).

<sup>8</sup> 17 CFR 240.17a-4(i).

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

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

<sup>11</sup> 17 CFR 200.30-3(a)(12).