

(ii) as to which he self-regulatory organization consents, the Commission will:

(A) By order approve the proposed 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 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-2002-20 and should be submitted by September 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

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

[FR Doc. 02-22654 Filed 9-5-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46430; File No. SR-PCX-2002-52]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. Relating to Changes in Its Marketing Fee Program

August 29, 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> notice is hereby given that on August 5,

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 PCX. PCX filed Amendment No. 1 to the proposed rule change on August 23, 2002.<sup>3</sup> PCX filed Amendment No. 2 to the proposed rule change on August 28, 2002.<sup>4</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

PCX proposes to limit the number of equity option issues to which marketing fees may apply to only those that are ranked in the 250 most actively traded equity options. The Exchange is also proposing to require that PCX Lead Market Makers who make payments to order flow providers as part of the Exchange's marketing fee program make, keep current, and preserve records relating to marketing fee arrangements and make those records available to the PCX upon request for inspection and review. The text of the proposed rule change is below; new language is italicized.

\* \* \* \* \*

#### Schedule of Fees and Charges for Exchange Services

PCX Options: Trade-Related Charges

\* \* \* \* \*

<sup>3</sup> Amendment No. 1 replaces the original filing in its entirety. In Amendment No. 1, the Exchange revised the description of the proposed rule change to conform to the proposed rule text and to provide greater detail, referenced the Exchange's pre-filing with the Commission, requested that the Commission waive the 30 day operative period so that the proposal may become operative on August 29, 2002, clarified how the top 250 most actively traded equity options will be selected, and added proposed rule text as exhibits.

<sup>4</sup> In Amendment No. 2, the Exchange revised the proposed rule text to delete the requirement that the required records include records pertaining to the "origin, use, transfer, distribution and amounts of all payments to order flow providers" and added the requirement that the required records be maintained in such a fashion to permit the Exchange to track payments to order flow providers "on the basis of payment (whether on a per contract or flat fee basis)." Because the Form 19b-4 submitted on August 5, 2002 was not complete, the proposed rule change was not considered filed. The proposed rule change became effective on August 28, 2002, the date on which Amendment No. 2 was filed with the Commission.

Marketing Charge Eligible Issues	Rates Variable—See separate schedule Top 250 most active nationally traded issues
Cap on Marketing .....	\$200 per trade Charge

\* \* \* \* \*

**Pacific Exchange, Inc**  
**Rules of the Board of Governors**

#### Market Maker Marketing Reports and Record Keeping

Rule 6.41(a) No Change.  
(b) *Marketing Charges Record Keeping—Lead Market Makers who make payments to order flow providers as part of the Exchange's marketing charges program, must make, keep current and preserve all books and records relating to marketing charges arrangements, including but not limited to all records pertaining to the identity of the order flow providers. Such records must be maintained in such a fashion as to permit the Exchange to track payments to order flow providers on the basis of payment (whether on a per contract or flat fee basis). Such books and records must be made available to the Exchange upon request.*

#### 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

On August 31, 2000, the PCX began collecting a marketing fee of \$0.40 per contract on all equity options traded at the PCX.<sup>5</sup> On August 31, 2001, the Exchange modified its marketing fee program in order to collect marketing fees ranging from \$0 to \$1.00 per contract on a per-issue basis.<sup>6</sup> The

<sup>5</sup> See Securities Exchange Act Release No. 43290 (September 13, 2000), 65 FR 57213 (September 21, 2000).

<sup>6</sup> See Securities Exchange Act Release No. 44830 (September 21, 2001), 66 FR 49728 (September 28, 2001).

<sup>15</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.

Exchange currently charges marketing fees as set forth in its Schedule of Rates.

The Exchange is now proposing to make certain amendments to its marketing fee program. Specifically the Exchange proposes to establish a limit on the number of equity options as to which a marketing fee may be charged to include only those issues that are within the top 250 most active, nationally-traded issues based on volume statistics reported by the Options Clearing Corporation.

The Exchange is also proposing to adopt new Rule 6.41(b) to require PCX Lead Market Makers who make payments to order flow providers as part of the Exchange's marketing fee program to make, keep current, and preserve records relating to payment for order flow arrangements, including but not limited to all records pertaining to the identity of the order flow providers. Such records must be maintained in a fashion to permit the Exchange to track payments made to order flow providers on the basis of payment. Such books and records must be made available to the PCX upon request for inspection and review.

The Exchange's determination of whether an equity option ranks in the top 250 most active, nationally traded issues will be based on volume statistics reported by the Options Clearing Corporation. The Exchange will consider changes to the marketing fees that are charged on a specific issue at the beginning of the March, June, September and December trade months. Any issue that is designated as a top 250 issue at the beginning of the March, June, September or December trade month will remain a top 250 issue for the purposes of charging a marketing fee until at least the next quarter that the Exchange amends its marketing fees. The Exchange will not ordinarily change marketing fees other than on a quarterly basis. The list of designated issues will be based on volume statistics for trading activity that occurred two months before the beginning of each quarter. For example, the list of top 250 issues for the March/April/May quarter will be based on January's volume; and the list of top 250 issues for the June/July/August quarter will be based on April's volume.<sup>7</sup>

The Exchange intends to notify its Members of the issues that are designated to be in the top 250 via a

regulatory bulletin that will be published at the beginning of each quarter.

The Exchange believes the proposed record keeping requirements should help the PCX review and verify that funds collected for order flow purposes are not used for improper purposes.

The Exchange proposes that the changes become effective for the September 2002 trade month.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of section 6(b)(5) of the Act, in particular, because it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanisms of a free and open market and a national market system, and in general, 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

The PCX has designated that the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has provided the Commission with written notice of its intent to file the proposed rule change, at least five business days prior to the filing date. Therefore, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. The PCX has requested, in order to permit PCX to implement the proposals for the month of September, that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the 30 days specified in Rule 19b-4(f)(6)(iii).<sup>13</sup> The Commission believes that the proposed rule change is consistent with the protection of investors and the public interest and, therefore, has determined to allow the proposed rule change to become operative as of August 29, 2002.<sup>14</sup>

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>15</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 PCX. All

<sup>12</sup> *Id.*

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> For purposes of accelerating the implementation of the proposed rule change only, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> The proposed rule change became effective on August 28, 2002, the date on which Amendment No. 1 was filed with the Commission and, therefore, the 60 day abrogation period began on August 28, 2002.

<sup>7</sup> The Exchange notes that it intends to use the same procedure for designating the top 250 actively traded issues that it currently uses in designating the top 120 actively traded issues for purposes of its "shortfall fee." See Securities Exchange Act Release No. 45351 (January 29, 2002), 67 FR 5631 (February 6, 2002).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

submissions should refer to File No. SR-PCX-2002-52 and should be submitted by September 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-22657 Filed 9-5-02; 8:45 am]

**BILLING CODE 8010-01-P**

## DEPARTMENT OF STATE

### [Public Notice 4116]

#### **Culturally Significant Objects Imported for Exhibition Determinations: "Drawing Now: Eight Propositions"**

**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 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 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, "Drawing Now: Eight Propositions," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art QNS, Queens, New York, from on or about October 17, 2002, to on or about January 6, 2003, 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 exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619-5997, and the address is United States Department of State, SA-44, Room 700, 301 4th Street, SW., Washington, DC 20547-0001.

Dated: August 29, 2002.

**Miller Crouch,**

*Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 02-22739 Filed 9-5-02; 8:45 am]

**BILLING CODE 4710-08-P**

## DEPARTMENT OF STATE

### [Public Notice 4117]

#### **Culturally Significant Object Imported for Exhibition Determinations: "Galleries for Nineteenth Century European Paintings"**

**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 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, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Galleries for Nineteenth Century European Paintings," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY from on or about September 21, 2002 to on or about May 2003, and then at the Art Institute of Chicago from on or about June 16, 2004 until on or about September 19, 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, contact Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/401-4779). The address is Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: August 26, 2002.

**Miller Crouch,**

*Assistant Secretary for Educational and Cultural Affairs (Acting), Department of State.*

[FR Doc. 02-22740 Filed 9-5-02; 8:45 am]

**BILLING CODE 4710-08-P**

## DEPARTMENT OF STATE

### [Public Notice 4118]

#### **Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to the Eastern Turkistan Islamic Movement (ETIM)**

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby determine that the Eastern Turkistan Islamic Movement (ETIM) has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: August 19, 2002.

**Richard L. Armitage,**

*Secretary of State, Department of State.*

[FR Doc. 02-22737 Filed 9-5-02; 8:45 am]

**BILLING CODE 4710-10-P**

## DEPARTMENT OF STATE

### [Public Notice 4082]

#### **Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting**

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 "C" Street NW., Washington, DC, September 23-24, 2002, in Conference Room 1105. Prior notification and a valid photo are mandatory for entrance into the building. One week before the meeting, members of the public planning to attend must notify Gloria Walker, Office of the Historian (202-663-1124) to provide relevant dates of birth, Social Security numbers, and telephone numbers.

The Committee will meet in open session from 1:30 p.m. through 3 p.m.

<sup>16</sup> 17 CFR 200.30(a)(12).