

be subject to disciplinary action pursuant to rule 10.13. The proposed recommended fines, pursuant to proposed rule 10.13(k)(i)(35) of this rule are \$500, \$1000 and \$1,500 for first, second and third time violations, respectively.

Seventh, the Exchange proposes to amend the text specifying the recommended fines for violations of the position limit rules pursuant to rule 10.13(k)(i)(21) of the Minor Rule Plan Recommended Fine Schedule. The Exchange proposes that position and exercise limit violations be the greater of \$250.00 or \$1 per contract over 5% of the applicable limit. The Exchange proposes this change so that it is obvious that the imposition of a monetary fine is recommended regardless of whether the applicable number of contracts is less than 5% over the designated position or exercise limit.

Eighth, the Exchange proposes to amend the text specifying the recommended fines for violations of the exercise limit rules pursuant to rule 10.13(k)(i)(22) of the Minor Rule Plan Recommended Fine Schedule. The Exchange proposes that position and exercise limit violations be the greater of \$250.00 or \$1 per contract over 5% of the applicable limit. The Exchange proposes this change so that it is obvious that the imposition of a monetary fine is recommended regardless of whether the applicable number of contracts is less than 5% over the designated position or exercise limit.

Ninth, the Exchange proposes to delete all references to OFPAs in rule 10.13(h) and (k), pertaining to the PCX Minor Rule Plan and to replace those references with the current rules. The Exchange proposes this change because it intends to renumber and incorporate all OFPAs pertaining to Options trading into the text of Rule 6.<sup>8</sup>

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act<sup>9</sup> because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in

regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest. The proposal is also consistent with Section 6(b)(6),<sup>10</sup> which requires that members and persons associated with members be appropriately disciplined for violations of Exchange Rules.

### *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 were not solicited or received with respect to the proposed rule change.

## 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 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, 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 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-PCX-99-48 and should be submitted by February 6, 2001.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43816; File No. SR-PCX-00-42]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Supervisory Procedures

January 8, 2001.

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 December 1, 2000, 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. On December 28, 2000, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On January 5, 2001, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, has become effective on filing pursuant to section 19(b)(3)(A) of the Act<sup>5</sup> and rule 19b-4(f)(6) thereunder.<sup>6</sup> The Commission is publishing this notice to solicit

<sup>11</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.

<sup>3</sup> See Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission (December 28, 2000) ("Amendment No. 1"). Amendment No. 1 corrected typographical errors that appeared in the proposed rule text.

<sup>4</sup> See Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission (January 5, 2001) ("Amendment No. 2"). Amendment No. 2 further corrected typographical errors that appeared in the proposed rule text.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>8</sup> See Securities Exchange Act Release No. 42035 (October 19, 1999), 64 FR 57681 (October 26, 1999) (File No. SR-PCX-99-13); Release No. 43293 (September 14, 2000) 65 FR 57416 (September 22, 2000) (File No. SR-PCX-99-36); Release No. 43025 (July 12, 2000), 65 FR 44559 (July 18, 2000) (File No. SR-PCX-99-40); Release No. 43149 (August 11, 2000), 65 FR 51392 (August 23, 2000) (File No. SR-PCX 99-44); and Release No. 42861 (May 30, 2000), 65 FR 36489 (June 8, 2000) (File No. SR-PCX-99-45).

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

<sup>10</sup> 15 U.S.C. 78f(b)(6).

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

The Exchange is proposing to adopt a rule requiring all members to adopt and implement a supervisory system and written supervisory procedures. Below is the text of the proposed rule change. Additions are *italicized* and deletions are in brackets.

#### Supervision

\* \* \* \* \*

#### Rule 4.25(a). Adherence to Law

*No member or member organization may engage in conduct in violation of the federal securities laws, the Constitution or the Rules of the Exchange. Every member or member organization must supervise persons associated with the member or member organization so as to assure compliance therewith.*

##### (b) Supervisory System

*Each member or member organization for which the Exchange is the Designated Examining Authority ("DEA") must establish and maintain a system to supervise the activities of its associated persons and the operations of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and PCX Rules. Final responsibility for proper supervision will rest with the member or member organization. The member's or member organization's supervisory system must provide, at a minimum, for the following:*

*(1) The establishment and maintenance of written procedures as required by paragraph (c) of this Rule.*

*(2) The designation of a person with authority to reasonably discharge his/her duties and obligations in connection with supervision and control of the activities of the associated persons of the member or member organization.*

*(3) The member or member organization must undertake reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.*

*(4) Each member or member organization must designate and specifically identify to the Exchange one or more persons who will be responsible for such supervision.*

##### (c) Written Procedures

*Each member or member organization must establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to ensure compliance with applicable federal securities laws and regulations, and with the PCX Rules.*

### 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 IV 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

There are some PCX and Pacific Exchange Equities, Inc., ("PCXE") rules that relate to supervision of firm activity for those PCX member firms that conduct a public business. these include options rules such as, "Office Supervision"<sup>7</sup> "Account Supervision,"<sup>8</sup> "Conduct on the Floor,"<sup>9</sup> and equities rules such as, "Allied Persons & Approved Persons,"<sup>10</sup> "Office Supervision,"<sup>11</sup> and "Account Supervision."<sup>12</sup> The Exchange, however, does not currently have a comprehensive rule that directly addresses the obligation of every member or member organization, whether conducting a public business or a proprietary business, to properly supervise its business and employees. The Exchange believes that the proposed rule clarifies (1) the responsibility of the member or member firm for the acts of its employees; and (2) the requirement that each member must supervise those persons for which it is responsible.

The proposed rule has three distinct parts. The first section of the proposed rule change is a prohibition on engaging in conduct that violates the federal securities laws, the Constitution or the Rules of the Exchange. This section also informs members that they must supervise all associated persons in order to assure compliance.

Section two of the proposed rule change sets forth the responsibility of all members or member organizations to establish and maintain a system to

supervise the activities of its employees. The proposed rule states that this system must be reasonably designed to achieve compliance with the federal securities laws and PCX rules. The final responsibility for proper supervision rests with the member or member organization. The supervisory system must, at a minimum, provide (1) the designation of a person responsible for carrying out the firm's supervisory obligations; (2) a requirement that the member or member organization must undertake reasonable efforts to determine that all supervisory personnel are qualified, by virtue of experience and training, to carry out their obligations; and (3) a requirement that the member or member organization must identify to the Exchange the person(s) who will be responsible for such supervision.

Section three of the proposed rule change states that each member or member organization must establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its employees. These procedures must be reasonably designed to achieve compliance with the federal securities laws and the PCX rules.

The Commission approved a similar rule filing by the National Association of Securities Dealers, Inc.<sup>13</sup> The Exchange believes that the proposed rule change will serve to significantly strengthen the ability of the Exchange to carry out its oversight responsibilities as a self-regulatory organization. The proposed rule change should also help the Exchange to carry out its examination, compliance, and surveillance functions. Finally, the proposed rule change clarifies to member or member organizations supervisory obligations.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>15</sup> in particular, in that 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 by setting forth member supervisory obligations.

<sup>7</sup> PCX Rule 9.1.

<sup>8</sup> PCX Rule 9.2(b).

<sup>9</sup> PCX Rule 6.2(b).

<sup>10</sup> PCXE Rule 2.14(d).

<sup>11</sup> PCXE Rule 9.1(c).

<sup>12</sup> PCXE Rule 9.1(d).

<sup>13</sup> See National association of Securities Dealers, Rule 3010.

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 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.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

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

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

Because the foregoing proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange 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, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>16</sup> and rule 19b-4(f)(6) thereunder.<sup>17</sup>

At any time within 60 days of the filing of the 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.

### **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 submissions should refer to File No. SR-PCX-00-42 and should be submitted by February 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43817; File No. SR-PCX-00-43]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Supervisory Procedures for Pacific Exchange Equities, Inc.**

January 8, 2001.

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 December 1, 2000, 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. On December 28, 2000, the Exchange filed an amendment to the proposed rule change.<sup>3</sup> On January 5, 2001, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, has become effective on filing pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>18</sup> 17 CFR 200.30-2(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission (December 28, 2000) ("Amendment No. 1"). Amendment No. 1 corrected typographical errors that appeared in the proposed rule text.

<sup>4</sup> See Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission (January 5, 2001) ("Amendment No. 2"). Amendment No. 2 further corrected typographical errors that appeared in the proposed rule text.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

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

The Exchange is proposing to adopt a Pacific Exchange Equities, Inc. ("PCXE") rule requiring all ETP Holders, Equity ASAP Holders and ETP Firms to adopt and implement a supervisory system and written supervisory procedures. Below is the text of the proposed rule change. Additions are *italicized*, and deletions are in brackets.

#### **Supervision**

\* \* \* \* \*

#### *Rule 6.17(a). Adherence to Law*

*No ETP Holder, Equity ASAP Holder or ETP Firms may engage in conduct in violation of the federal securities laws, the Constitution or the Rules of the Corporation. Every ETP Holder, Equity ASAP Holder or ETP Firm must supervise persons associated with it so as to assure compliance therewith.*

#### *(b). Supervisory System*

*Each ETP Holder, Equity ASAP Holder or ETP Firm for which the Corporation is the Designated Examining Authority ("DEA") must establish and maintain a system to supervise the activities of its associated persons and the operation of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and PCXE Rules. Final responsibility for proper supervision will rest with the ETP Holder, Equity ASAP Holder or ETP Firm. The ETP Holder's, Equity ASAP Holder's or ETP Firm's supervisory system must provide, at a minimum, for the following:*

*(1) The establishment and maintenance of written procedures as required by paragraph (c) of this Rule.*

*(2) The designation of a person with authority to reasonably discharge his/her duties and obligations in connection with supervision and control of the activities of the associated persons of the ETP Holder, Equity ASAP Holder or ETP Firm.*

*(3) The ETP Holder, Equity ASAP Holder or ETP Firm must undertake reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.*

*(4) Each ETP Holder, Equity ASAP Holder or ETP Firm must designate and specifically identify to the Corporation one or more persons who will be responsible for such supervision.*

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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