

participate, in accordance with the same method that governs how a specialist allocates an order. As noted above, the Commission believes that this method is reasonable, and that the revision in Amendment No. 1 adds clarity to the proposed rule change.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 7, including whether Amendment No. 7 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 Amex. All submissions should refer to File No. SR-Amex-00-30 and should be submitted by May 22, 2003.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>45</sup> that the proposed rule change (SR-Amex-00-30), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>46</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47728; File No. SR-Amex-2003-16]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange LLC Relating to Automatic-Execution for Nasdaq National Market Securities

April 23, 2003.

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 March 13, 2003, the American Stock Exchange LLC ("Amex" 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. On April 3, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

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

The Exchange seeks to extend its existing Automatic Execution System ("Auto-Ex") to Nasdaq National Market System stocks ("Nasdaq stocks") admitted to trading pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (the "OTC/UTP Plan").<sup>4</sup> The text of the

proposed rule change is set forth below. Proposed new language is in *italics*.

\* \* \* \* \*

#### *Automatic Execution For Nasdaq National Market Securities (Temporary)*

*Rule 118A-T. (a) An Auto-Ex eligible order in a Nasdaq National Market System security will be executed automatically at the Amex Published Quote ("APQ") for such security in accordance with the provisions of this rule.*

*(b) An Auto-Ex eligible order for a Tier 1 Nasdaq National Market security must be a round lot, or partial round lot ("PRL"), market or marketable limit order for 1,000 shares or less received by the Exchange electronically. An Auto-Ex eligible order for a Tier 2 Nasdaq National Market security must be a round lot, or PRL, market or marketable limit order for 500 shares or less received by the Exchange electronically. For purposes of this Rule, a "Tier 1" Nasdaq National Market security is a stock with an average daily consolidated trading volume of over 10 million shares during the preceding calendar quarter, and a "Tier 2" Nasdaq National Market security is a stock with an average daily consolidated trading volume of 10 million shares or less during the preceding calendar quarter.*

*(c) The specialist will be the contra side to each Auto-Ex execution. In the event that the specialist trades as a result of an automatic execution at a price at which the specialist could have executed one or more limit orders on the book, the specialist shall immediately execute any such limit orders at the price of the Auto-Ex trade to the extent such booked orders would have been executed had the incoming order not been executed automatically.*

*(d) An Auto-Ex eligible order will be routed to the specialist and will not be*

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

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

<sup>3</sup> In Amendment No. 1, the Amex provided anticipated implementation dates, stating that the Amex proposes to implement the proposed rule change before the end of May 2003 on a temporary basis until it implements its enhanced Auto-Ex technology in the fourth quarter of 2003. See April 2, 2003, letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission.

<sup>4</sup> The OTC/UTP Plan was initially approved in 1990. See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990). It has subsequently been amended. See also Securities Exchange Act Release Nos. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995); 36589

(December 13, 1995), 60 FR 65696 (December 20, 1995); 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); 38794 (June 30, 1997), 62 FR 36586 (July 8, 1997); 39505 (December 31, 1997), 63 FR 1515 (January 9, 1998); 40151 (July 1, 1998), 63 FR 36979 (July 8, 1998); 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999); 42268 (December 23, 1999), 65 FR 1202 (January 6, 2000); 43005 (June 30, 2000), 65 FR 42411 (July 10, 2000); 44099 (March 23, 2001), 66 FR 17457 (March 30, 2001); 44348 (May 24, 2001), 66 FR 29610 (May 31, 2001); 44552 (July 13, 2001), 66 FR 37712 (July 19, 2001); 44694 (August 14, 2001), 66 FR 43598 (August 20, 2001); 44804 (September 17, 2001), 66 FR 48299 (September 19, 2001); 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001); 46381 (August 19, 2002), 67 FR 164 (August 23, 2002); 46729 (October 25, 2002), 67 FR 212 (November 1, 2002).

<sup>45</sup> 15 U.S.C. 78s(b)(2).

<sup>46</sup> 17 CFR 200.30-3(a)(12).

automatically executed in the following situations:

(i) Auto-Ex will be turned-off for one or more securities when the specialist in conjunction with a Floor Governor or two Floor Officials determine that quotes are not reliable and the Exchange or the Nasdaq Stock Market is experiencing communications or systems problems, "fast markets," or delays in the dissemination of quotes.

(ii) Auto-Ex will not occur if it would cause the election of a stop or stop limit order on the book, or it would cause a trade to occur through the price of an all or none order on the book.

(iii) Auto-Ex will not occur in a stock for 10 seconds after there has been an Auto-Ex trade in that security.

(iv) Auto-Ex will not occur in a stock when the spread in the APQ in that security is equal to or greater than thirty cents.

(v) Auto-Ex will not occur in a stock when the APQ on the opposite side of an incoming order is not at the NBBO for that security.

(vi) Auto-Ex will not occur when the size displayed in the APQ on the opposite side of an incoming order is less than the size of the incoming order.

(vii) Auto-Ex will not occur when an incoming order is larger than the applicable Tier 1 or Tier 2 size parameter for that stock.

(e) The Auto-Ex Enhancements Committee ("Committee") will review a request from a specialist with respect to one or more securities to:

(i) Increase the size of Auto-Ex eligible orders above 1,000 share Tier 1 or 500 share Tier 2 parameters,

(ii) Reduce the duration of the 10-second pause between Auto-Ex executions, and/or

(iii) Increase the number of trades before the implementation of the 10-second pause in Auto-Ex described in paragraph (d)(iii) above.

The Committee may approve, disapprove or conditionally approve such requests. The Committee will balance the interests of investors, the specialist, and the Exchange in determining whether to grant a specialist's request to modify the Auto-Ex parameters specified in (i) through (iii) of paragraph (e) of this Rule. The Committee also will consider a request from a specialist to reduce Auto-Ex parameters that previously had been increased, provided, however, that the Committee may not reduce the Auto-Ex parameters below the floors stated in paragraphs (b) and (d) of this Rule. The Committee may delegate its authority to one or more Floor Governors. The Committee will meet promptly to review a Governor's decision to modify Auto-Ex

parameters in the event that a Governor acts pursuant to delegated authority.

\* \* \* \* \*

## 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

The Exchange is proposing to extend its existing Auto-Ex technology to Nasdaq stocks trading pursuant to the OTC/UTP Plan to permit automatic execution of small orders to accommodate the needs of some investors who desire such executions.<sup>5</sup> The Amex proposes to implement the proposed rule change prior to the end of May 2003 on a temporary basis until it can implement the enhanced Auto-Ex technology that it currently is developing. The Exchange anticipates that it will implement its enhanced Auto-Ex technology in the fourth quarter of 2003.

Under the proposed rule change, the Amex would automatically execute a market or marketable limit order received by the Exchange electronically when (1) the order is equal to or less than the size displayed in the Amex Published Quote ("APQ"),<sup>6</sup> (2) the APQ is at the National Best Bid or Offer ("NBBO") for the security, and (3) the order is for 1,000 shares or less for a "Tier 1" Nasdaq stock, or 500 shares or less for a "Tier 2" Nasdaq stock.<sup>7</sup> For

<sup>5</sup> The Commission previously has approved the extension of the Exchange's Auto-Ex technology to exchange traded funds ("ETFs"). See, Securities Exchange Act Release No. 47105 (December 30, 2002), 68 FR 592 (January 6, 2003).

<sup>6</sup> The APQ is the quote that the Amex, pursuant to the OTC/UTP Plan, disseminates to investors by means of the plan securities information processor for last sale and quotation information.

<sup>7</sup> A "Tier 1" Nasdaq stock is a Nasdaq stock that has an average daily consolidated trading volume of more than 10 million shares during the preceding calendar quarter. A Tier 2 Nasdaq stock is a Nasdaq stock that has an average daily consolidated trading volume of 10 million shares or less during the preceding calendar quarter. At the end of each

example, assume that the NBBO for a stock is .03 to .05, and the APQ is .03 to .06. In this case, the Amex would automatically execute an eligible market sell order but would not automatically execute an eligible market buy order because the Amex is not at the NBBO for the stock on the offer side of the market. The Amex would automatically execute eligible orders when it is on the NBBO even where the NBBO is locked or crossed. Orders that are ineligible for Auto-Ex will be routed automatically to the book for execution by the specialist. The enhancements that the Exchange intends to implement to Auto-Ex in the fourth quarter of 2003 will allow Auto-Ex eligible orders to trade directly with orders on the book. This enhancement, accordingly, will eliminate the need for specialists to separately execute orders on the book that would have been executed by incoming Auto-Ex eligible orders by allowing incoming orders to automatically trade with orders on the book.

The specialist would be the contra side to every Auto-Ex trade. To protect limit orders on the book, in the event that an automatic execution results in the specialist buying or selling stock at a price at which the specialist could have executed an order on the book in whole or part, the specialist would be required to immediately execute the limit order at the price of the Auto-Ex trade to the extent that the limit order would have been executed had the incoming order not been automatically executed against the specialist.

Auto-Ex would be unavailable in one or more securities where the specialist in conjunction with a Floor Governor or two Floor Officials determines that quotes are not reliable and the Exchange or the Nasdaq National Market System is experiencing communications or systems problems, "fast markets,"<sup>8</sup> or delays in the dissemination of quotes. The Exchange believes that any quote disseminated in these circumstances may be unreliable and, hence, should not be available for automatic execution. This is consistent with disengagement of Auto-Ex for EFTs when quotes are

calendar quarter, the Amex would determine whether a particular Nasdaq stock admitted to trading pursuant to the OTC/UTP Plan would be considered a Tier 1 or Tier 2 Nasdaq stock for the following quarter.

<sup>8</sup> The Exchange represents that "fast markets" means the unusual market conditions that give rise to the unusual market exception pursuant to Amex Rule 115. Telephone conversation among William Floyd-Jones, Associate General Counsel, Amex; Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission; and Ann E. Leddy, Attorney, Division of Market Regulation, Commission (April 23, 2003).

unreliable.<sup>9</sup> Auto-Ex also would not occur if the execution would elect a stop or stop limit order on the book, or would trade through an all or none order on the book. The Exchange believes that the specialist should review situations where an incoming order may elect one or more stop orders or trade through an all or none order on the book to ensure that the orders are executed consistent with the maintenance of a fair and orderly market. Auto-Ex also would be unavailable for 10 seconds after an automatic execution to give the specialist an opportunity to update the market.

The Exchange believes that the 1,000 and 500 share size limits and the 10-second pause in Auto-Ex following an automatic execution are minimum standards that a specialist should have flexibility to increase on a security-by-security basis. The Exchange, consequently, is proposing to allow specialists to request an increase in the size of orders eligible for Auto-Ex, an increase in the number of trades between automatic executions before there is a pause in Auto-Ex, and a reduction in the 10-second pause. The Auto-Ex Enhancements Committee would review such requests to enhance these Auto-Ex parameters. The Auto-Ex Enhancements Committee also would review requests to reduce these parameters (if they had been previously increased) to no less than the base levels found in the rule.<sup>10</sup> The Auto-Ex Enhancements Committee could delegate its authority under the rule to one or more Floor Governors. If a Governor acts pursuant to delegated authority, the Committee would have to meet promptly to review the Governor's decision.

Auto-Ex would be unavailable when the spread in the Amex Published Quote is 30 cents or more. The Exchange represents that this is intended to prevent automatic executions at

disadvantageous prices to the incoming electronic order.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>11</sup> in general, and Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange believes that the proposed rule change will speed the execution of small orders for Nasdaq stocks on the Amex. The Exchange also believes that the proposal will facilitate the comparison and settlement of trades, since Auto-Ex transactions result in "locked-in" trades.

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

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposal, in fact, will enhance competition among markets and thereby benefit investors by allowing the Exchange to provide Auto-Ex for Nasdaq stocks.

### *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. 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 Exchange. All submissions should refer to File No. SR-Amex-2003-16 and should be submitted by May 22, 2003.

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

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register** to permit application of the Auto-Ex technology to Nasdaq stocks at the earliest time possible. 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.<sup>13</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>14</sup> because it helps remove impediments to, and perfects the mechanisms of, a free and open market and a national market system. Specifically, the Commission believes that the proposed rule change does not raise any significant regulatory issues in view of the fact that the Exchange already provides Auto-Ex for options and ETFs, and the instant proposal seeks to extend existing Auto-Ex technology to another type of security traded on the Exchange. As a result, there are no unique regulatory issues that the Commission has not previously considered. In addition, the Exchange is proposing to implement Auto-Ex on a temporary basis until its enhanced Auto-Ex technology is available.

Furthermore, upon commencement of the Amex trading Nasdaq securities, the Commission received a substantial number of complaints that the Amex's trading of Nasdaq securities without Auto-Ex functionality was disrupting the Nasdaq marketplace generally. To

<sup>9</sup> See Commentary .03 to Amex Rule 128A, "Contract Made on Acceptance of Bid or Offer." The Exchange has assured the Commission that the circumstances in which Auto-Ex is not available will be identical to the circumstances in which Auto-Ex is not available for ETFs and that the disengagement of Auto-Ex for Nasdaq securities will work in the same fashion as the disengagement of Auto-Ex for ETFs. Telephone conference among William Floyd-Jones, Associate General Counsel, Amex; Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission; and Ann E. Leddy, Attorney, Division of Market Regulation, Commission (April 16, 2003).

<sup>10</sup> The Auto-Ex Enhancements Committee is an existing committee of the Exchange consisting of the Exchange's four Floor Governors and the Chairmen (or their designees) of the Specialists Association, Options Market Makers Association and the Floor Brokers Association.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

the extent such concerns had merit, the Commission believes the Amex's development of Auto-Ex functionality for Nasdaq securities should help address the concerns raised by other market participants.

For the reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-Amex-2003-16) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 03-10791 Filed 4-30-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47734; File No. SR-PCX-2003-13]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to its Arbitration Program

April 24, 2003.

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 April 11, 2003, 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. The Commission has received two comment letters regarding the proposed rule change.<sup>3</sup> On April 17, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

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

PCX is proposing to amend its arbitration rules by amending Commentary .02 to PCX Rule 12.1 and adding new PCX Rule 12.35(b). PCX Rule 12.35(b) would require that pending arbitrations filed prior to the date the SEC approves the proposed rule changes set forth herein (the "Approval Date") be administered in accordance with PCX Rules 12.1 through 12.34 if an arbitrator has been appointed prior to the Approval Date and all parties to the arbitration have waived application of the California Rules of Court, Division VI of the Appendix, entitled "Ethics Standards of Neutral Arbitrations in Contractual Arbitration" (the "California Standards"), and waived any claims against the PCX that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 ("CCCP Claims").<sup>5</sup> Both waivers must be made without condition and in the form required by PCX. A copy of the proposed waiver form for the CCCP Claims was filed with the Commission as Exhibit A to the proposed rule change. The waiver for the California Standards must be made pursuant to the rules previously approved by the Commission.<sup>6</sup> Additionally, this rule change will require industry parties in arbitration to waive the CCCP Claims upon the execution of a waiver by a customer or, in industry cases, upon the execution of a waiver by an associated person with claims of statutory discrimination.

Below is the text of the proposed rule change. Proposed new language is *italicized*, deleted text is in [brackets].

\* \* \* \* \*

### PCX RULE 12

#### Arbitration

#### Matters Subject to Arbitration

Rule 12.1(a)-(g)—No change. Commentary:

.01 No change.

.02 It may be deemed conduct inconsistent with just and equitable principles of trade for a member, a member organization or a person

associated with a member or member organization to:

(a) fail to submit to arbitration on demand under the provisions of this Rule[.];

(b) fail to waive the California Rules of Court, Division VI of the Appendix, entitled "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), if all the parties in the case who are customers have waived application of the California Standards in that case; or to fail to waive the California Standards if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived application of the California Standards in that case;

(c) fail to waive any claims against the Exchange that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 ("CCCP Claims"), if all the parties in the case who are customers have waived the CCCP Claims in that case; or to fail to waive the CCCP Claims if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived the CCCP Claims in that case;[or]

(d) to fail to appear or to provide any document in his or its possession or control as directed pursuant to the provisions of this Rule; or

(e) to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Rule where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

.03 No change.

\* \* \* \* \*

### Rule 12.35 Applicability of Arbitration Rules

(a) Reserved.

(b) Arbitrations Filed Prior to [insert Approval Date]. Arbitration claims that were filed prior to [insert Approval Date] and remain pending will be administered as follows:

(i) The arbitration claim will be administered in accordance with Rules 12.1 through 12.34 if:

(A) arbitrator(s) have been appointed as of [insert Approval Date]; and

(B) all parties to the arbitration have waived, without condition and in the form required by the Exchange, the application of the California Standards and the CCCP Claims (as defined in Commentary .02 of Rule 12.1).]

\* \* \* \* \*

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> *Id.*

<sup>17</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 e-mails dated April 14 and 18, 2003 from Tim Canning, Esq.

<sup>4</sup> See letter dated April 17, 2003 from Kathryn Beck, Senior Vice President, PCX, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission.

<sup>5</sup> The Exchange has filed a separate proposal (SR-PCX-2002-77) to address the administration of all other arbitrations.

<sup>6</sup> See Securities Exchange Act Release No. 46881 (Nov. 21, 2002), 67 FR 71224 (November 29, 2002).