

provided in sections 802.02 and 802.03. If, at the end thereof, such companies are compliant with the continued listing standards for which they were originally notified, but below the increased requirements proposed herein, the Exchange would grant them an opportunity to present an additional business plan advising the Exchange of definitive action the company has taken, or is taking, that would bring the company into conformity with the increased requirements within a further 12 months. In addition, if a company completes its currently applicable follow-up procedures and Plan and is not compliant at that time with the continued listing standards for which it was originally notified, but is above the increased requirements set forth above, the Exchange would consider that company to be in conformity with the continued listing standards.

The Commission believes that the Exchange's transition policies are reasonable and consistent with the Act. The Commission notes that these policies should impact few companies.<sup>16</sup> The Commission, however, expects that the Exchange will follow closely the progress of companies that are currently in their Plan period or subsequent 12-month period, to ensure that these companies will attain the proposed continued listing standards. The Commission notes that, pursuant to section 802.02, the Exchange has the discretion to suspend trading in any security and apply to the Commission for delisting, when the Exchange deems it necessary for the protection of investors.

The NYSE has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that it is reasonable to grant accelerated approval to allow for the efficient administration of the Exchange's original and continued listing programs as promptly as possible. The Commission notes that the listing standard of the NYSE that is being modestly lowered, as proposed, would remain substantially higher than other comparable listing standards of other marketplaces.<sup>17</sup> In addition, the Commission notes that the amended original and continued listing standards will be in effect only as a pilot program for a six-month period. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,<sup>18</sup> for

accelerated approval of the proposed rule change, as amended.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-NYSE-2003-43), as amended, is hereby approved on an accelerated basis, as a six-month pilot, scheduled to expire on July 29, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-49138; File No. SR-PCX-2003-36]**

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Composition of Its Audit Committee

January 28, 2004.

On July 14, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change that would amend its rule regarding the PCX's Audit Committee. On August 21, 2003, PCX submitted by facsimile Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on September 29, 2003.<sup>4</sup> The Commission received no comments on the proposal.

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>5</sup> and, in particular, the requirements of Section 6(b)(5) of the Act.<sup>6</sup> Section 6(b)(5) requires, among other things, that the rules of the exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission notes that the proposed rule change specifies that all members of PCX's Audit Committee must be Public Governors. The PCX Constitution requires "Public Governors" to be representatives of the public and not a broker or dealer or affiliated with a broker or dealer.<sup>7</sup> Previously, Audit Committee members were not required to be Public Governors. Furthermore, the proposed rule change requires that at least one member of the Audit Committee have accounting or financial management expertise, as the Board of Governors interprets such qualification in its business judgment. The Commission believes that the proposed change should help improve the Exchange's governance structure by requiring that all members of the Audit Committee be Public Governors and that at least one of those members have accounting or financial management expertise. In this way, the independence and effectiveness of the Audit Committee should be enhanced. Therefore, the Commission finds that the proposed rule change is consistent with the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-PCX-2003-36), as amended by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</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 Steven B. Maitlin, Senior Counsel, Regulatory Policy, PCX, to Leah Mesfin, Attorney, Division of Market Regulation, Commission, dated August 21, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange replaced the term "independent Governors" in the proposed rule text with "Public Governors."

<sup>4</sup> Securities Exchange Act Release No. 48500 (September 17, 2003), 68 FR 56030 (September 29, 2003).

<sup>5</sup> In approving this proposed rule change, 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>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> See PCX Constitution, Article II, Section 1(a).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>16</sup> See *supra* n.11.

<sup>17</sup> See *supra* note 15.

<sup>18</sup> 15 U.S.C. 78s(b)(2).