

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50818; File No. SR-PCX-2004-96]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend PCX Equities, Inc. Rule 4.5 To Require All Financial/Operations Principals of PCXE ETP Firms To Successfully Complete the Series 27 Examination and All Compliance Supervisors of PCXE ETP Firms To Successfully Complete the Series 24 Examination

December 7, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 20, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCXE. On December 6, 2004, PCXE filed Amendment No. 1 to the proposed rule change.³ 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

PCXE is proposing to amend PCXE Rule 4.5 to require all financial/operations principals of PCXE ETP Firms to successfully complete the National Association of Securities Dealers, Inc.'s ("NASD") Financial and Operations Principal Examination ("Series 27 Examination") and to add PCXE Rule 6.18(d) to require all compliance supervisors of PCXE ETP Firms to successfully complete the NASD's General Securities Principal Examination ("Series 24 Examination"). The text of the proposed rule change is below. Proposed new language is in *italics*.

Rule 4.5. Unless the Corporation determines otherwise, every ETP Holder, except as otherwise provided in Rule 4.7, shall file with the Corporation the reports prescribed by this Section. *Each ETP Holder subject to Exchange Act Rule 15c3-1 shall designate a Financial/Operations Principal. The*

duties of a Financial/Operations Principal shall include taking appropriate actions to assure that the ETP Holder complies with applicable financial and operational requirements under the Rules and the Exchange Act, including but not limited to those requirements relating to the submission of financial reports and the maintenance of books and records. Each Financial/Operations Principal is required to successfully complete the Financial and Operations Principal Examination (Series 27 Exam). Each Financial/Operations Principal designated by an ETP Holder shall be registered in that capacity with the Corporation in a form and manner prescribed by the Corporation. A Financial/Operations Principal of an ETP Holder may be a full-time employee of the ETP Holder or, with the prior written approval of the Corporation, may be a part-time employee or independent contractor of the ETP Holder. All ETP Holders shall be in compliance with this Rule by March 31, 2005.

Rule 4.5(a)-(e)—No Change.

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Rule 6.18(a)-(c)—No Change.

(d) Each individual not associated with an ETP Holder and in the case of an ETP Holder, the person (or persons) designated to direct day-to-day compliance activity (such as the Compliance Officer, Partner or Director) and each other person at the ETP Holder directly supervising ten or more persons engaged in compliance activity should have overall knowledge of the securities laws and Exchange rules and must pass the General Securities Principal Examination (Series 24) and, if the ETP Holder does business with the public, the General Securities Sales Supervisor Qualification Examination (Series 9/10). Where good cause is shown, the Corporation, at its discretion, may waive all or a portion of the examination requirements. The Corporation may give consideration to the scope of the ETP Holder's activity, to previous related employment, and to examination requirements of other self-regulatory organizations. In such cases, the Corporation must be satisfied that the person is qualified for the position. All ETP Holders shall be in compliance with this Rule by March 31, 2005.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCXE included statements concerning

the purpose of and basis for its proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. PCXE 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

PCXE is proposing to amend PCXE Rule 4.5 to require all financial/operations principals of PCXE ETP Firms to successfully complete the Series 27 Examination. PCXE believes that requiring these individuals to successfully complete the Series 27 Examination will ensure that those individuals who prepare the financial statements for PCXE ETP Firms will be sufficiently qualified to prepare such statements. In addition, PCXE is proposing to add PCXE Rule 6.18(d) to require all compliance supervisors of PCXE ETP Firms to successfully complete the Series 24 Examination. PCX believes that requiring these individuals to successfully complete the Series 24 Examination will ensure that those who are supervising equities trading are sufficiently qualified. As part of proposed Rule 6.18(d), PCXE may waive all or a portion of the Series 24 Examination requirements. In evaluating whether to grant a full or partial waiver from the examination requirements, PCXE will review a number of factors including but not limited to the individual's industry experience, education, previous registration history with the Exchange and other examinations taken by the individual that may be acceptable substitutes in conjunction with securities industry experience.

These changes will bring the PCXE qualifications to perform such functions up to date with the requirements of other self-regulatory organizations.⁴

2. Statutory Basis

PCXE believes that the proposed rule change is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

⁴ The proposed rule change is based on the Chicago Board Options Exchange's Rule 3.6A(a) and the New York Stock Exchange's Rule 342.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original filing in its entirety.

equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

PCXE 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

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 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2004-96 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-96. This file

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2004-96 and should be submitted on or before January 4, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Jill M. Peterson,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50817; File No. SR-PCX-2004-105]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Make Clarifying Changes to the PCX Schedule of Fees and Charges With Respect to the Options Orientation Fee To Include the Cost of the Series 44 or 45 Examination and To Adopt a New Fee Associated With the Series 46 Examination

December 7, 2004

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October

28, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On December 3, 2004, PCX filed Amendment No. 1 to the proposed rule change.³ PCX filed this proposal pursuant to Section 19(b)(3)(A)⁴ of the Act and Rule 19b-4(f)(6)⁵ thereunder, which renders the proposal effective upon filing with the Commission. 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 is proposing to make a clarifying change to the PCX Schedule of Fees and Charges ("Schedule") with respect to the Options Orientation Fee. The text of the proposed rule change is available at PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. 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

The Exchange proposes to amend the Schedule to make a clarifying change to the Options Orientation Fee. In October of 2003, the Exchange amended the Options Orientation Fee in connection with the launch of PCX Plus.⁶ At the time, the Exchange reconfigured a development and delivery process for the Exchange's Orientation and

³ Amendment No. 1 replaced and superseded the original filing in its entirety. For purpose of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 3, 2004, the date that the PCX filed Amendment No. 1.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ See Securities Exchange Act Release No. 48597 (October 7, 2003), 69 FR 59439 (October 15, 2003) (SR-PCX-2003-57).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.