they report test results (and other Year 2000 information) to the SROs. The proposed rule change will help the NYSE participate in coordinating Year 2000 testing, including industry-wide testing, and in remediating any potential Year 2000 problems. This, in turn, will help ensure that the industry-wide tests and the NYSE's Year 2000 efforts are successful. The proposed rule change will also help the NYSE work with its member firms, the SIA, and other SROs to minimize any possible disruptions the Year 2000 may cause.

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, N.W., Washington, D.C. 20549. 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 in 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 28, 1999.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act [7] that the proposed rule change (SR–NYSE–98–29) and Amendment No. 1 thereto is hereby on an accelerated basis.[8]

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–311 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(2).

[8] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40863; File No. SR–PCX–98–52]

Self-Regulatory Organizations; Pacific Exchange, Inc; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to Rule 2.6(e) on the Prevention of the Misuse of Material, Nonpublic Information

December 30, 1998.

I. Introduction

On October 5, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend PCX Rule 2.6(e) which relates to guidelines established for the prevention of the misuse of material, nonpublic information by members and member organizations. On November 3, 1998, the PCX filed an amendment to the proposed rule change.[3] The Commission published the proposed rule change, as amended, for comment in the **Federal Register** on November 27, 1998.[4] No comments were received. This order approves the proposal, as amended.

II. Description of the Proposal

In 1993, the Commission approved a PCX proposal to adopt Rule 2.6(e) relating to the establishment, maintenance and enforcement of procedures designed to prevent the misuse of material, nonpublic information under the Insider Trading and Securities Fraud Enforcement Act of 1988 (''ITSFEA'').[5] The Exchange is proposing to amend the rule in several respects.

First, the rule currently states: ''Members that are required, pursuant to Rule 2.6, ti file SEC Form X–17A–5 with the Exchange on an annual basis shall file contemporaneously with those submissions attestations signed by such members stating that the procedures mandated by this Rule have been established, enforced and maintained,'' The proposed rule change would state that only those organizations for which the exchange is the Designated Examining Authority are required to file ITSFEA compliance acknowledgments stating that the procedures mandated by this rule have been established, enforced and maintained.[6]

The rule currently defines associated person as ''any partner, officer, director or branch manager of a member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by or under common control with a member, or any employee of a member.'' The Exchange is proposing to change the definition to ''anyone who directly is engaged in the member or member organization's trading-related activities, including general partners, officers, directors, managers (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by or under common control with a member,or any employee of the member or member organization.'' The rule change would exclude limited partners from this definition, unless the limited partners are directly involved in the member organization's trading-related activities.

The Exchange further proposes to define ''employee'' as ''every person who is compensated directly or indirectly by the member or member organization for the solicitation or handling of business in securities, including individuals trading securities for the account of the member or member organization, whether such securities are dealt in on the exchange or dealt over-the-counter.'' [7] Thus, independent contractors [8] as well as actual employees will be subject to the requirements of the rule.

The Exchange proposes to delete superfluous language regarding record keeping in Commentary .03 of Rule 2.6(e). Finally, the Exchange proposes to clarify that an Exchange member who is a lessor of a membership, and is not registered and not required to register as a broker-dealer under Section 15 of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Robert Pacileo, Jr., Staff Attorney, PCX, to Kathy England, Assistant Director, Division of Market Regulation, Commission, dated October 29, 1998.

[4] Securities Exchange Act Release no. 40686 (November 18, 1998), 63 FR 65626.

[5] *See* Securities Exchange Act Release No. 33171 (November 9, 1993), 58 FR 60892 (November 18, 1993).

[6] The Exchange notes that this rule change is a codification of the existing practices of the Exchange.

[7] The Commission approved a similar definition that the Philadelphia Stock Exchange proposed in 1997. *See* Securities Exchange Act Release No. 39178 (October 1, 1997), 62 FR 52804 (October 9, 1997.)

[8] *See, e.g.*, Letter from Douglas Scarff, Director, Division of Market Regulation, SEC to Gordon S. Macklin, President, National Association of Securities Dealers, Inc., dated June 18, 1982 (clarifying the status of independent contractors under the Act).

Act, is not subject to the requirements of the rule.

III. Discussion

After careful review, the Commission finds that the proposal to amend PCX Rule 2.6(e) is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, with the requirements of Section 6(b) of the Act.[9] Specifically, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designated, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[10] The Commission also believes that the proposed rule change is consistent with the Section 6(b)(1) requirement that an exchange have the capacity to enforce compliance by its members and persons associated with its members with the Act, the rules thereunder, and the rules of the exchange.

The Commission believes that the proposed rule change is a reasonable means of streamlining the procedures designed to prevent the misuse of material, nonpublic information by PCX members. Accordingly, the proposed rule changes should result in more effective and efficient monitoring and enforcement of the PCX of compliance with Rule 2.6(e) by its members without compromising investor protection.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[11] that the proposed rule change (SR–PCX–98–52) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–302 Filed 1–6–99; 8:45 am]

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[9] 15 U.S.C. 78f(b).

[10] In approving this proposed rule change, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40852; File No. SR–PCX–98–16]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Telephonic and Electronic Communication Devices on the Trading Floor

December 28, 1998.

I. Introduction

On March 31, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require Exchange approval before any telephonic or electronic communications device may be used on the floor of the Exchange. The proposed rule change, including Amendment No. 1 to the proposed rule change was published for comment in the **Federal Register** on April 23, 1998.[3] This order approves the proposal as amended.

II. Description of the Proposal

The Exchange is proposing to adopt new Rule 4.22, which provides that no Member or Member Organization may establish or maintain any telephonic or electronic communication between the floor and any other location, or between locations on the floor, without the prior approval of the Exchange.

The Exchange is also proposing to eliminate Options Floor Procedure Advice (''OFPA'') F–3 relating to communication access to and from the options trading floor.[4] The Exchange believes that proposed Rule 4.22 adequately replaces OFPA F–3, which it believes is obsolete. The Exchange notes that proposed Rule 4.22 is substantially similar to Rule 220 of the American Stock Exchange (''Amex'') and Rule 6.23 of the Chicago Board Options Exchange (''CBOE'').[5]

The Exchange states that it is making this proposed rule change as a housekeeping measure to assure that the Exchange's rules state expressly that Members and Member Organizations must obtain prior approval before establishing or maintaining telephonic or electronic communications between the floor and other locations, or between locations on the floor. The Exchange believes that the provision will improve upon its current rules by providing its Members and Member Organizations with clear notice of the requirement for Exchange approval.

III. Discussion

The Commission finds that the proposed rule change is consistent with Section 6 of the Act[6] and the rules and regulations thereunder. In particular, the Commission believes that the proposal is consistent with the section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.[8]

In determining to approve the proposal, the Commission notes that proposed Rule 4.22 is substantially similar to Amex Rule 220.[9] Similar to Amex's Rule 220, PCX Rule 4.22 will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39881 (April 16, 1998), 63 FR 20236.

[4] OFPA F–3, *Communication Access To and From the Options Trading Floor*, reads as follows: Pursuant to Rule XVII, prior approval by the Exchange will be required before the installation of any form of direct private communication devices, including PT&T and Western Union voice lines and teletype or similar hard copy wire connections. Such approval will be granted only if the connection from the Options Trading Floor terminates in one of the following manners: (1) At an office of a PSE member organization. (2) At a floor facility of a PSE member organization on the Options Trading Floor of another national securities exchange, subject to the approval of that exchange. (3) At either of the Equity Trading Floor of PSE. Approval will not be granted for connections terminating at any facility of a person or organization who or which is not a member organization of PSE. Standard (non-private, non-direct) telephones may be installed on the Options Trading Floor in member organizations assigned floor booths as desired but all requests for such installation must be directed to the Options Floor Manager for purposes of coordination. In making use of communications access to and from the Options Trading Floor members are reminded of the provisions of section 12(k) of Rule I.

[5] Amex Rule 220 is discussed below. CBOE Rule 6.23 provides, in part, that ''No member shall establish or maintain any telephone or other wire communications between his or its office and the Exchange without prior approval by the Exchange.'' *See* CBOE Rule 6.23.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78f(b).

[9] *See* Securities Exchange Act Release No. 33735 (March 8, 1994), 59 FR 12015 (March 15, 1994) (order approving SR–Amex–87–33). The proposed rule differs from Amex Rule 220 in that Amex Rule 220 requires written permission while proposed Rule 4.22 does not require that permission to install a telephonic or electronic communication device on the floor of the Exchange be in writing. *See* Amex Rule 220.